

1977 S.C. Op. Atty. Gen. 87 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-98, 1977 WL 24440

Office of the Attorney General

State of South Carolina

Opinion No. 77-98

April 6, 1977

*1 The Board of Health and Environmental Control, pursuant to its grant of authority in Sections 32–761, et seq., of the South Carolina Code of Laws, 1962, as amended, and by its concomittant exercise of the State's police power, may prescribe a regulation which requires that a hospital licensee will operate and maintain the number of beds limited by the hospital's license if such regulation is deemed necessary by the Board.

TO: Malcolm U. Dantzler, M.D.
Deputy Commissioner
Medical Care and Health Regulations

QUESTION PRESENTED:

Whether the South Carolina Board of Health and Environmental Control has the authority under S. C. Code Sections 32–761, et seq., as amended, known as the ‘State Hospital Construction and Franchising Act,’ to limit the number of beds permitted to be operated by a license issued under Code Section 32–784 to the actual number of beds which the licensee intends to operate and maintain during the year.

CASES, STATUTES, ETC., INVOLVED:

S. C. Code Sections 32–763, as amended; 32–764, as amended; 32–772; 32–781, as amended; 32–732; 32–784; [State v. Reeves, 112 S.C. 383, 99 SE 841, 842 \(1919\)](#); Case, ‘[Validity and Construction of Statute Requiring Establishment of ‘Need’ as Precondition to Operation of Hospital or Other Facilities for the Care of Sick People](#),’ 61 ALR 3rd 278.

DISCUSSION OF ISSUES:

The purpose of the State Hospital Construction and Franchising Act is to provide for the development, establishment and enforcement of basic standards. These basic standards include, among other things, basic standards for the maintenance and operation of hospitals and other institutions, which, in the light of existing knowledge, will ensure safe and adequate treatment of persons in such institutions (S.C. Code Section 32–763, as amended).

The South Carolina Board of Health and Environmental Control is the sole state agency for control of and participation in the program for licensing of hospitals desiring to construct new, additional or altered facilities (S. C. Code Section 32–764, as amended). The Board's Division of Health Facilities issues licenses to qualifying applicant hospitals (S. C. Code Section 32–765, as amended).

The rule is well recognized that the operation of a hospital or other institution for the care of the sick, aged, or infirm bears a reasonable relation to the health, safety and welfare of the community in which such facility is located, and is therefore subject to governmental regulation as a valid exercise of the police power (Case, ‘[Validity and Construction of Statute Requiring Establishment of ‘Need’ as Precondition to Operation of Hospital or Other Facilities for the Care of Sick People](#),’ 61 ALR 3rd 279, 280, citing 40 AmJur 2d, [Hospitals and Asylums](#) Section 4). Hence, the purpose of the State Hospital Construction and Franchising Act is essentially commensurate with the traditional notion of the state's police power. The South Carolina

Supreme Court has recognized that licensing is one method whereby the state can exercise its police power. ([State v. Reeves](#), 112 S.C. 383, 99 SE 841, 842 (1919)).

*2 The Board, pursuant to its grant of authority by the Legislature in Sections 32–761, *et seq.*, of the Code of Laws of South Carolina, 1962, as amended, is empowered to regulate hospitals by requiring a license as a valid exercise of the State's police power. S. C. Code Section 32–781 provides as follows:

No institution which maintains and operates organized facilities for the diagnosis, treatment or care of two or more nonrelated persons suffering from illness, injury or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours shall be established, conducted or maintained in the State without first obtaining a license therefor in the manner herein provided, except those facilities licensed by the South Carolina Mental Health Commission.

In order to protect the public health, safety and welfare, therefore, the Board must require that a license be obtained as a condition precedent to the establishment, conduct or maintenance of a hospital.

S. C. Code Section 32–782 provides the manner in which a hospital must apply for a license. This provision states in part that the application for a license—

. . . shall set forth . . . such additional information as the Board may require, including affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as may be lawfully prescribed hereunder.

You have asked whether or not the Board of Health and Environmental Control may require by regulation that the beds a facility proposes to license under this Section 32–782 must be limited to the number of beds which the licensee will guarantee to maintain and operate with adequate staff and materials during the license year.

Such a regulation could lawfully be prescribed by the Board of Health and Environmental Control, provided that the regulation be deemed necessary by the Board. Section 32–772 of the Code grants the Board the power to prescribe rules and regulations. It provides in part as follows:

In carrying out the provisions of this article, the Board shall (1) require such reports, make such inspections and investigations and prescribe such regulations as are deemed necessary . . . (5) adopt reasonable rules and regulations in carrying out the purposes of this article.

Any regulation prescribed by the Board under this section must, in the Board's judgment, be necessary and be designed to carry out the purposes of the State Hospital Construction and Franchising Act. A review of the Act reveals no section which prohibits the type regulation you propose. Moreover, you have pointed out several sections of the Act, particularly Sections 32–773 and 32–780, which could support the proposition that the proposed regulation is consistent with the purposes of the State Hospital Construction and Franchising Act.

It is therefore the opinion of this office that limiting by regulation the beds identified in license applications under Section 32–782 to that number which the licensee will guarantee to maintain and operate with adequate staff and materials during the license year is a matter within the discretion of the Board of Health and Environmental Control under the State Hospital Construction and Franchising Act. However, this opinion is not intended as authority that such a regulation is necessary under the Act, since that determination is properly within the discretion and expertise of the Board of Health and Environmental Control.

CONCLUSION:

*3 The Board, pursuant to its grant of authority in 32–761, *et seq.*, as amended, and by its concomittant exercise of the state's police power, may prescribe a regulation which requires that a hospital licensee will operate and maintain the number of beds limited by the hospital's license if such regulation is deemed necessary by the Board.

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