

1979 WL 42917 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1979

**\*1 Re: Opinion Concerning Promulgation of Regulations By the Legislative Council**

Mr. Robert D. Heilman  
Chief Staff Attorney  
Legislative Council  
State House  
P.O. Box 11417  
Columbia, S. C. 29211

Dear Mr. Heilman:

You have asked whether regulations prescribed by the Legislative Council to carry out the provisions of Article I of the State Register and Administrative Procedures Act (§§ 1-23-10, *et seq.*, of the 1976 Code, hereinafter 'APA') must be promulgated in accordance with the rule making procedures of that Act. It is the opinion of this Office that they do. [South Carolina Code § 1-23-50 \(1976\)](#) provides that 'the Legislative Council shall prescribe regulations for carrying out the provisions of this Article relating to the State Register and the form and filing of regulations.' Whether the Legislative Council must adhere to the procedures set forth in the APA in promulgating its regulations necessarily depends upon the question of whether the regulations described in § 1-23-50 are 'regulations' within the meaning of the APA. The term 'regulation' is defined in [South Carolina Code § 1-23-10\(4\)](#) as 'each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.' It seems clear that the regulations to be promulgated by the Legislative Council pursuant to § 1-23-50 are 'regulations' within the foregoing definition.

The regulations to be promulgated by the Legislative Council are clearly statements made by an 'agency.' The term 'agency' is defined in the APA as 'each state board, commission, department, executive department or officer, other than the legislature or the courts, authorized by law to make regulations or to determine contested cases.' § 1-23-10(1) of the [South Carolina Code \(1976\)](#). The Legislative Council is an administrative body created by the General Assembly for the purpose of facilitating and improving the work of the General Assembly. See, § 2-11-50 [South Carolina Code \(1976\)](#). While some members of the Council are members of the legislature, the Council does include among its membership non-legislators, such as the Secretary of State. See, § 2-11-10 [South Carolina Code \(1976\)](#). Therefore, while the Council may exist as an administrative arm of the General Assembly, it is not itself the legislature. Since the Council is specifically authorized to prescribe regulations [§ 1-23-50], it is the opinion of this Office that the Legislative Council is an 'agency' within the meaning of § 1-23-10(1).

Furthermore, the regulations to be prescribed by the Legislative Council are agency statements of 'general public applicability.' Since the regulations prescribe such things as the number of copies of documents filed with the Legislative Council which will be available for distribution to the public [§ 1-23-50(3)] and the price to be charged for individual copies of documents or regulations [§ 1-23-50(4)], it seems clear that any and all members of the public who desire to have copies of filed documents are bound by the number and price restrictions set forth in the Council's regulations. In other words, members of the public can get no more copies than the number prescribed by the Council and they must pay those prices established by the Council.

\*2 Finally, there can be little doubt that the regulations to be prescribed by the Legislative Council implement or prescribe policy. Certainly such things as manner of certification of copies [§ 1-23-50(1)], manner and form in which documents or regulations are to be printed, compiled, indexed, etc., [§ 1-23-50(2)] and prices to be charged [§ 1-23-50(4)] come within the commonly understood meaning of the word 'policy.'

For the foregoing reasons, it is the opinion of this Office that the regulations to be prescribed by the Legislative Council pursuant to [§ 1-23-50 of the 1976 Code](#) are 'regulations' within the meaning of [§ 1-23-10\(4\)](#). Since all regulations within the meaning of that Section must be promulgated in accordance with the general requirements of Article I of the APA, it is the opinion of this Office that the regulations promulgated by the Legislative Council must likewise be promulgated in accordance with the provisions of that Act.

Very truly yours,

L. Kennedy Boggs  
Assistant Attorney General

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