1977 S.C. Op. Atty. Gen. 219 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-289, 1977 WL 24629

Office of the Attorney General

State of South Carolina
Opinion No. 77-289
September 15, 1977

*1 TO: William L. Belvin, Jr.
Secretary
South Carolina Methadone Council
South Carolina Commission on Alcohol and Drug Abuse

QUESTION

Must the South Carolina Council for the Control of Methadone Program for Narcotic Addicts comply with the process of promulgating rules and regulations as outlined by the Administrative Procedure Act? More specifically, do regulations which apply only to hospitals have 'general public applicability' as stated within the Administrative Procedure Act?

STATUTES AND CASES

State Register Administrative Procedure Act, 60 Acts and Joint Resolutions 391 (No. 176) (1977);

Code of Laws of South Carolina §§ 44–53–710 et seq. (1976);

Gray v. McLendon, 134 GA. 224, 63 S.E. 859 (1910);

Black's Law Dictionary (4th Ed. 1968).

DISCUSSION

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts was created by the General Assembly of South Carolina for the purpose of controlling methadone programs within the State. The General Assembly granted to the Council the authority to promulgate rules and regulations necessary to carry out the provisions of the Act and hospitals were made subject to said regulations. CODE OF LAWS OF SOUTH CAROLINA §§ 44–53–710 et seq. (1976).

Undoubtedly, the Council is an 'agency' within the definition of the Administrative Procedure Act as it is a body of the State which is other than the legislature or the courts and is authorized by law to make regulations. 77 Acts and Joint Resolutions 391 (No. 176) (1977).

The answer to whether an agency statement of general public applicability encompasses regulations pertaining only to hospitals is not as easily gleaned from the language of the enabling legislation nor the Administrative Procedure Act. However, it appears that said regulations do fall within the category of statements of general public applicability.

Black's Law Dictionary defines 'general' as 'universal,' 'not particularized,' 'comprehending the whole as distinguished from . . . applying . . . to a portion only.' 'Public' is defined a 'pertaining to a state, nation, or a whole community,' or 'general.' Black's further states:

A distinction has been made between the terms 'public' and 'general.' They are sometimes used as synonymous. The former term is applied strictly to that which concerns all citizens and every member of the state, while the latter includes a lesser though still a large portion of the community. Black's Law Dictionary 812 and 1393 (4th ed. 1968).

Gray v. McLendon, 134 GA. 224, 67 S.E. 859 (1910) stands for the proposition that a law is general even if it relates only to persons or things in a class. Deeming 'general law,' law of 'general applicability' and law of 'general public applicability' as essentially synonymous, a regulation promulgated which applies only to hospitals must be established in accordance with the provisions of the Administrative Procedures Act. Regardless of whether the term 'general public applicability' refers to protection of the general public or regulation of the general public, hospitals are a class subject to the regulations and are entitled to the due process protections of the Administrative Procedures Act. Consequently any regulation promulgated by the Council which affects hospitals must be done so in accordance with the Administrative Procedures Act.

<u>CONCLUSION</u>

 *2 The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act as a regulation applying only to hospitals is a regulation of 'general public applicability.'

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