

1979 WL 42996 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1979

\*1 The Honorable Virgil L. Conrad  
Commissioner  
South Carolina Department of Social Services  
P.O. Box 1520  
Columbia, South Carolina 29202

Dear Mr. Conrad:

The Department of Social Services proposes to amend the Health and Fire Regulations filed December 28, 1976, relating to child day-care centers. Section 43-35-720, Code of Laws of South Carolina, 1976, as amended, incorporates by reference the 1976 Health and Fire Regulations and applies them to religious related child day-care centers regulated pursuant to that Article. See § 43-35-710 et seq., Code of Laws of South Carolina, 1976, as amended. You have asked whether the Department of Social Services should enforce the amended version of the regulations or the 1976 version in reference to religious related child day-care centers affected by § 43-35-720. It is the opinion of this Office that the Legislature did not intend to prohibit the Department of Social Services from amending, in proper course, the Health and Fire Regulations that apply to religious related child day-care centers; thus, you are advised that upon becoming final regulations the amended version of the Health and Safety Regulations applicable to all child day-care centers will be equally applicable to religious related child day-care centers.

Statutory incorporation by reference of other statutes and regulations has been commonly utilized by the Legislature and accepted by the Courts. [University of South Carolina v. Mehlman](#), 245 S.C. 180, 139 S.E.2d 771; [Welling v. Clinton Newberry Natural Gas Authority](#), 221 S.C. 417, 71 S.E.2d 7; [State v. Means](#), 148 S.C. 118, 145 S.E. 695; [Lyles v. McCown](#), 82 S.C. 127. The cardinal rule in the interpretation of legislation is to ascertain and give effect to legislative intent if it can be ascertained. [Adams v. Clarendon County School District](#) 270 S.C. 266, 241 S.E.2d 897; [Helfrich v. Brazzington Sand & Gravel Co.](#), 268 S.C. 236, 233 S.E. 291.

This rule applies as well to legislation which adopts another statute or regulation by reference. 82 C.J.S. Statutes, § 370; Sutherland, Statutes and Statutory Construction, Vol. 2A, § 51.08.

A reading of § 43-35-720 portends a legislative intent to ensure that the Health and Safety Regulations applied to religious related child day-care centers be uniform and consistent with those applied to other child day-care centers. The use of a reference to a particular regulation subserves its purpose. It does not appear that the Legislature has displayed particular affection for the details of the Health and Fire Regulations on file with the Secretary of State on December 1976. Therefore, it cannot be said that the Health and Fire Regulations applicable to religious related child day-care centers must be stagnated while those applicable to similar facilities evolve in due course.

A contrary conclusion may conflict with the constitutional mandate of equal protection; therefore, that interpretation must be avoided. [University of South Carolina v. Mehlman](#), 245 S.C. 180, 139 S.E.2d 771. Thus, it is the conclusion of this Office that if the Health and Fire Regulations relating generally to child day-care centers are formally revised in final form in accordance with the South Carolina Administrative Procedures Act (§ 1-23-10 et seq.) then the revised version of the regulations will be applicable to religious related child day-care centers as well.

Very truly yours,

**\*2** Edwin E. Evans  
Assistant Attorney General

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