

1979 WL 43450 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 7, 1979

**\*1 Re: Applicability of Administrative Procedure Act to Motor Vehicle Management Regulations**

The Honorable William T. Putnam  
Executive Director  
State Budget & Control Board  
P.O. Box 2444  
Columbia, S. C. 29211

Dear Mr. Putnam:

You have asked whether regulations promulgated by the State Budget and Control Board to implement the Motor Vehicle Management Act [Act No. 644, Part II, §§ 24(A) through 24(N) of 1978] must be promulgated in accordance with the provisions of the Administrative Procedure Act [[§ 1-23-10 et seq. Code of Laws of South Carolina \(1976\)](#)]. It is the opinion of this Office that they do not.

The Motor Vehicle Management Act is codified in [§§ 1-11-220 through 1-11-330 of the 1976 Code](#), as amended. The Budget and Control Board is to hold titles to virtually all State-owned motor vehicles (§ 1-11-310) and the Board is charged with the responsibility of developing a comprehensive State Fleet Management Program for the acquisition, maintenance and management of motor vehicles, [§ 1-11-220](#). It is understood that only State employees are authorized to use State-owned vehicles. Indeed, the Budget and Control Board is charged with the responsibility of eliminating all unofficial and unauthorized use of State vehicles. [§ 1-11-220\(b\)](#). It therefore seems clear that policies or regulations governing the use of State-owned motor vehicles are, by definition, directed towards State employees only.

The question of whether or not the Administrative Procedure Act requires that a given regulation be promulgated in accordance with its terms depends upon the threshold question of whether or not the proposed regulation is a 'regulation' within the meaning of the Act. [South Carolina Code § 1-23-10\(4\)](#) defines the term 'regulation' as

. . . each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation but does not include description of agency procedure applicable only to agency personnel . . . (Emphasis Added).

Since the regulations promulgated by the Budget and Control Board are applicable only to State employees (agency personnel), instead of members of the general public, it is the opinion of this Office that the regulations promulgated by the Budget and Control Board are not 'regulations' within the meaning of the foregoing definition. It is therefore unnecessary for the Budget and Control Board to promulgate these regulations in accordance with the procedures outlined in the Administrative Procedure Act. This opinion conforms to an opinion issued by this Office dated March 15, 1978, in which it was stated that personnel policies and regulations promulgated by the Budget and Control Board's Personnel Division were not regulations which had to be promulgated in accordance with the Administrative Procedure Act.

There is an additional reason why the regulations promulgated by the Budget and Control Board need not be promulgated in accordance with the provisions of the Administrative Procedure Act. The whole purpose of providing for the notice and comment procedure in the APA is to afford persons who will be affected by proposed regulations to

be heard in opposition thereto. The Motor Vehicle Management Act specifically creates a Motor Vehicle Management Council (§ 1-11-230) to, among other things, act as a hearing board for the purpose of hearing and ruling on all disputes, complaints and other grievances lodged against the promulgation, implementation and enforcement of regulations developed pursuant to the Act. § 1-11-240. Since the Motor Vehicle Management Act specifically affords interested persons the opportunity for notice and comment on proposed regulations, it would be superfluous and unnecessary to require that the notice and comment provisions of the APA also be required.

**\*2** For the foregoing reasons, it is the opinion of this Office that the regulations promulgated by the Budget and Control Board pursuant to the Motor Vehicle Management Act need not be promulgated in accordance with the provisions of the Administrative Procedure Act.

Very truly yours,

L. Kennedy Boggs  
Assistant Attorney General

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