

1979 WL 43135 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 25, 1979

*1 Honorable M. Inez Moore
Director of Research and Administration
Medical, Military, Public and Municipal Affairs Committee
House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Inez:

You have requested an opinion concerning the constitutionality of Article II, §§ 202, 203, and 204 of proposed legislation entitled 'South Carolina Pharmacy Practice Act.' It is the opinion of this Office that those sections would quite likely be deemed unconstitutional in so far as the power to appoint certain members of the Board of Pharmacy is delegated to private citizens.

The Supreme Court held in Gold v. S.C. Board of Chiropractics Examiners that the appointment of members on a professional licensing board could not be delegated to a private person or association. — S.C. —, 245 S.E.2d 117 (1978) citing Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971). The licensed pharmacists in this state, to whom the power of appointment would be given under the proposed legislation, are private citizens. The fact that they are licensed pharmacists does not change their status as private citizens; the license they hold is merely a privilege to engage in the practice of pharmacy. 51 Am.Jur.2d 'Licenses and Permits,' § 1.

This does not confer upon them an official status.

The Supreme Court has elsewhere approved a statute which provides for an appointment of members to a board by the governor upon the recommendation of an association of private persons 'having a rational and substantial relation to the law to be administered' by the Board. Floyd v. Thornton, 220 S.C. 414, 68 S.E.2d 332 (1951). Therefore, the potential constitutional problem noted above could be avoided by a provision in the proposed legislation by which results of the balloting described in § 204 of that bill would constitute a recommendation to the governor, with a subsequent provision granting to the governor the actual power of appointment of those members. A change of this sort would likely cure any potential constitutional problems with the South Carolina Pharmacy Practice Act.

Sincerely yours,

David C. Eckstrom
State Attorney

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