

1978 WL 34722 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 24, 1978

*1 Honorable Michael Stanley Gullledge
Member
House of Representatives
District No. 11
Highway 72
Abbeville, South Carolina

Dear Representative Gullledge:

Mr. McLeod has requested me to respond to your inquiry concerning whether or not a county council member can also serve as chairman of that county's Democratic Party. There is no constitutional nor statutory prohibition of which I am aware against the combination since it does not constitute dual office holding, and there does not appear to be any conflict of interest between the two positions.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT

February 27, 1978
The Honorable Daniel R. McLeod

Attorney General

Wade Hampton Office Building

P.O. Box 11549

Columbia, SC 29211

Dear Mr. McLeod:

The Department needs an immediate opinion from you with reference to several concerns related to the authority of the Advisory Committee established under Act 184 and to the status of certain regulations governing the regulation of child day care facilities. Letters from members of the Advisory Committee citing some of these concerns are enclosed and referenced.

Under Act 659 regulations for child day care facilities were promulgated and filed with the Secretary of State on December 28, 1976. On June 13, 1977 a new Act, Act 184, governing the regulation of child day care facilities was signed into law and the Administrative Procedures Act (APA) went into effect simultaneously.

The following information is requested.

A. The first group of questions relate to the status of regulations for child day care facilities filed on December 28, 1976 with the Secretary of State:

(1) Did the regulations for child day care facilities promulgated under Act 659 on December 28, 1976 automatically remain in effect when Act 184 was signed into law? Specifically, do these regulations still have the force and effect of law?

(2) If no changes were made in the regulations filed on December 28, 1976 except to put them into the new format prescribed by the APA, does the Department have to follow the sequential steps cited on page one paragraph three (3) of the February 22, 1973 letter (Exhibit A) from Mr. Philip J. R. Antley to Mrs. Yvonne Oliver, Chairman of the State Advisory Committee. Please compare enclosed copies of the regulations described above: (a) Copies dated December 8, 1976 are in the format in which regulations were filed on December 28, 1976; (b) Regulations numbered 114-405.5-114.405.12 are in the format required under the APA, but the content is the same in both instances.

It is the position of the Advisory Committee that the Department has proceeded without regard to the requirements of the Administrative Procedures Act or Act 184. In other words, the Committee contends that the Department should promulgate these regulations anew in accordance with the APA and Act 184. Please refer to the second page of Mr. Antley's letter (Exhibit A) and Mr. Eich's letter in its entirety (Exhibit B). Refer also to the January 16, 1978 and the February 9, 1978 responses by your office to this Agency (Exhibits C and D).

***2 B.** The second group of questions relates to the status of the enclosed proposed procedural regulations 114-405.1-114-405.4, which were developed by Department staff to implement Act 184. They are now in the promulgation process.

The following actions have been taken or are in process by the Department with reference to these regulations: November-December, 1977. Development by Department staff.

January, 1978. Approval by appropriate Department officials.

February 3, 1978. Published the notice of proposed promulgation.

February 10, 1978. Published in the State Register.

February 15, 1978. Copies sent to members of Advisory Committee.

February 21, 1978. Copies sent to all licensed, approved or registered providers.

February 25, 1978. Interpretation and Clarification by staff to Advisory Committee at its organizational meeting.

March 6, 1978. Public Hearing.

The questions to be addressed in regard to the procedural regulations are as follows:

(1) What should have been the responsibility of the Advisory Committee with reference to the development of the proposed regulations?

(2) What should have been the responsibility of the entities cited in Article VI, Section 1, (a) of Act 184 in the development of these proposed regulations?

(3) What is the meaning of initial promulgation of regulations as cited in Article VII Section 2(a) of Act 184?

(4) In the initial meeting of the Advisory Committee on February 25, 1978, what should have been their role in relation to the proposed regulations, 114-405.1-114.405.4?

(a) Review and Comments?

(b) Vote Required?

(c) Schedule a Heart?

(5) In the initial meeting of the Advisory Committee, what should have been their responsibility in relation to suggested standards for Family Day Care Homes?

C. How do we interpret the role and duties of the Advisory Committee as defined in Act 184, Article VI, Section 1, (a) and Article VII, Section 27 Specifically:

(1) What is meant by 'advice and consent'?

(2) Does the Advisory Committee have the authority to go into Executive Session and to forbid the presence of DSS staff?

I appreciate the time spent by your staff in providing consultation and assistance to this Agency in regard to the implementation of Act 184.

Thank you for your continuing cooperation. Your early attention to this request will be appreciated.

Sincerely,

Virgil L. Conrad
Commissioner

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