

1978 S.C. Op. Atty. Gen. 65 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 74-40, 1978 WL 22523

Office of the Attorney General

State of South Carolina

Opinion No. 78-40

February 28, 1978

\*1 To: Dr. William S. Hall  
State Commissioner of Mental Health

QUESTION:

Does the South Carolina Department of Mental Health have the authority to contract directly with the State Department of Education for the provision of educational services to residents of institutions operated by the Department of Mental Health?

AUTHORITIES:

[S.C. Code Ann. §§ 44-9-90, 44-11-50 \(1976\)](#);

18 C.J.S., Corporations, § 1122;

1956-57 Ops. Atty. Gen., p. 264;

DISCUSSION:

[S.C. Code Ann. § 44-9-90 \(1976\)](#) provides in part:

The [South Carolina Mental Health] Commission shall have the following rights, powers and duties:

(1) It shall form a body corporate in deed and in law with all the powers incident to corporations . . .

A corporation, including a public corporation, need not have the express capacity to enter into contracts. Where not prohibited, there exists an implied power to make all such contracts as are necessary and proper to fulfil the purposes of its existence. See 18 C.J.S., Corporations, § 1122; 1956-57 Ops. Atty. Gen. p. 264.

[S.C. Code Ann. § 44-9-90\(5\) \(1976\)](#) states that the Mental Health Commission ‘shall provide . . . vocational training . . . which will tend to the mental and physical betterment of patients and which is designed to lessen the increase of mental illness, mental defectiveness, epilepsy, drug addiction and alcoholism . . .’

Under this general statutory provision, it is our opinion that the Department of Mental Health by necessary implication has the authority to contract with the State Department of Education in order to provide educational training for school age residential patients of the South Carolina Department of Mental Health.

CONCLUSION:

The Department of Mental Health currently has the necessary authority by implication to contract directly with the South Carolina Department of Education for the provision of educational services for school age residential patients.

Nathan Kaminski, Jr.  
Assistant Attorney General

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