

1978 WL 34759 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 10, 1978

\*1 Virgil L. Conrad  
Commissioner  
S.C. Department of Social Services  
1531 Confederate Avenue Extension  
North Complex Towers  
Post Office Box 1520  
Columbia, South Carolina 29202

Dear Mr. Conrad:

You have asked the opinion of this office concerning the role and duties of the Advisory Committee, established by [Code of Laws of South Carolina § 43-35-10](#) et.seq. (1976), as to regulations promulgated by the Department of Social Services pertaining to Child Day Care Facilities.

Code of Laws of South Carolina § 43-35-910 provides that ‘the department shall with the advice and consent of the Advisory Committee develop and promulgate regulations depending upon the nature of services to be provided for the operation and maintenance of child day care centers and group day care homes.’ That section also provides that ‘[I]n developing such regulations and suggested standards the department shall consult with: . . . (4) The State Advisory Committee on the Regulations of Child Day Care facilities established by this chapter.’

Code of Laws of South Carolina § 43-35-1120 provides that ‘[T]he State Advisory Committee on the Regulation of Child Day Care Facilities shall: (a) After the initial promulgation of regulations following the adoption of this chapter, the committee shall review changes in the regulations and suggested standards proposed by the department and make recommendations thereon to the commissioner. The committee shall evaluate the regulations and suggested standards at the three year review period and recommend necessary changes to the department. After the promulgation of the initial regulations following the adoption of this chapter, no regulation shall be promulgated by the department which has been disapproved by a simple majority of the committee.’

It has been asserted that these two sections are in conflict and that the last legislative expression should control this conflict. However rules of statutory construction require that an act should be interpreted so as to prevent seeming contradictions between sections of this type. [McCollum v. Snipes](#), 213 SC 254, 49 SE2d 12 (1948). It is the opinion of this office that these sections can be harmonized and that the Advisory Committee has a two step role in the development and promulgation of regulations.

By § 43-35-910 the department is required to seek the advice and consent of the Advisory Committee concerning the development and promulgation of regulations. This office interprets this section to relate to the initial promulgation of regulations pursuant to [§ 43-35-10](#) et. seq. The words ‘advise and consent’ have been judicially interpreted to mean that, if the consent is not secured, then the promulgation of such regulations would be of no effect. [State v. Bowden](#), 75 S.E. 866 (1912). Since the act also requires that a public hearing be held on such regulations it is suggested that the Department secure the consent of the Committee to all proposed regulations prior to holding such a public hearing.

\*2 Thereafter the Committee, pursuant to § 43-35-1120, has the responsibility to review regulations and suggested standards and recommend changes to the department. Again no regulation can be promulgated which has been disapproved by a majority of the Committee.

You have also requested an opinion as to whether the regulations for child day care facilities promulgated and filed with the Secretary of State in December 28, 1976, still have the force and effect of law. Since these regulations were on file with the Secretary of State prior to January 1, 1977, the Administrative Procedures Act (Code of Laws of South of South Carolina § 1-23-10 et. seq. (1976)) provides that they shall have the full force and effect of law, assuming that the department had the authority to issue the regulations in the first place. However, since the new Child Day Care Facilities Act requires that all regulations which are to be used to implement this new act be approved by the Advisory Committee, it is the advice of this office that the department seek approval of these regulations from the Advisory Committee and repromulgate them in accordance with the new act and the Administrative Procedures Act.

It should also be noted that there are other groups and agencies which the department is required to consult with according to § 43-35-910. While these groups do not have the power of the Advisory Committee, it is suggested that some type of direct contact be established between them and the department to seek their comments and suggestions. Any oral comments these groups desire to make could then be aired at the public hearing.

Sincerely yours,

Richard D. Bybee  
Staff Attorney

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