

1978 WL 34831 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 4, 1978

*1 The Honorable Thomas M. Marchant, III
Member
House of Representatives
Box 816
Greenville, South Carolina 29602

Dear Representative Merchant:

You have requested an opinion as to whether the Greenville County Mental Retardation Board (hereinafter referred to as the Board) is a county agency or a state agency. It is the opinion of this office that the Board is a quasi-state and quasi-county agency, performing functions for both governmental units.

The Board appears to be a state agency insofar as it is required to ‘ . . . confer and cooperate with the State Department of Mental Retardation in the implementation of programs within the county. . . .’ § 2(4) Act No. 8, S.C. ACTS, 1971 (hereinafter referred to as the 1971 Act). At the same time the Board appears to be a county agency insofar as it is required to ‘ . . . conduct a continuing study of the county's needs in mental retardation planning and programming and [to] propose adequate means and priority in meeting these needs’ *Id.* § 2(2). Furthermore, it is required to ‘ . . . report annually to the Greenville County Council concerning activities in which the commission has engaged.’ *Id.* § 2(5). The Board, therefore, performs functions for, and is responsible to, both the State Department of Mental Retardation as well as the County Council.

You also requested an opinion as to the question of funding for the Board. It is the opinion of this office that those activities of the Board performed pursuant to § 2(4) of the 1971 Act would be funded by the State Department of Mental Retardation; and that those activities performed pursuant to § 2(2) and (5) of the 1971 Act would be funded by the county. It also appears that grants and gifts from other sources may be accepted to fund any of these activities.

The 1971 Act does not explicitly set out responsibilities or procedures for funding the Board. The original purpose for the Board appeared to be that of a non-paid advisory commission, assisting both the State Department of Mental Retardation and the County Council. *Id.* §§ 1 and 2. However, the statute clearly anticipated that the Board would also implement health care programs. *Id.* § 2(4). The act is silent, however, as to how these would be funded.

There is a general statute which regulates all county mental retardation boards within the state. §§ 44-21-1010, et seq., S.C. CODE, 1976. A special provision within that statute attempts to exempt the Greenville County Mental Retardation Commission from the general provisions of that statute. § 7, Act No. 1127, S.C. ACTS, 1974. This exemption appears to violate the constitutional prohibition against local laws for a specific county. [Art. 8, Sect. 7, S.C. CONST.](#) (as amended). Therefore, the validity of that exemption may be in doubt, and that general law may actually apply to the Greenville County Board.

However, without resolving the constitutional question, it might be inferred that the legislative intent as to funding the Greenville County Board was the same as that for all other county mental retardation boards. Clearly, the special law creating the Greenville County Board is not inconsistent with the general law as to funding all county boards. That general law is set out at § 44-21-860, S.C. CODE, 1976. It provides that the County Board shall ‘ . . . utilize all lawful sources of funding. . . .’ § 44-21-860, S.C. CODE, 1976. This clearly embraces the use of county funds. Furthermore, the

Board may apply for funds to the State Department of Mental Retardation under terms and conditions prescribed by that Department. Id. However, under the general law, the legislature will not appropriate funds directly for any county board.

*2 In conclusion, it would appear that the Board should seek funding from the State Department of Mental Retardation to the fullest extent possible. Funding for any further services which the County Council wishes the Board to offer must then be provided by the county, if these services could not be funded by some other means.

Sincerely yours,

David C. Eckstrom
Staff Attorney

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