

1975 WL 29384 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1975

\*1 Charles D. Barnett, Ph.D.  
Commissioner  
South Carolina Department of Mental Retardation  
Post Office Box 4706  
Columbia, South Carolina 29240

Dear Chuck:

Thank you for your letter of December 30, 1974, inquiring if the Chairman of the South Carolina Health and Social Development Policy and Planning Council may be appointed from the ranks of a major provider agency and whether the chairmanship of the Council and the occupancy of another position, clearly an office, is violative of the dual officeholding provision of the State Constitution.

I think that the answer to the question is that the Executive Order of the Governor is of no force and significance from a legal standpoint. So far as I can discover, the Order is issued without any specific statutory authority and the creation of the Council by the Governor can be rescinded at any time just as the predecessor board was rescinded by action of the Governor in creating the new Council. It is entirely possible also that the force of the Executive Order will expire with the incumbency of Governor West. Consequently, even if the Chairman of the Council is appointed from the ranks of providers, contrary to the terms of the Executive Order, it is meaningless to pursue the matter for the reason that the Council is a creature of the Governor's discretion and may be altered by him at will. The Council itself cannot be considered a State agency and I doubt seriously if it can be considered as a legal entity. It is merely an organizational arm of the Governor's Office similar to the organizational arms of various agencies which may be compiled for administrative purposes.

I am mindful of the fact that Act No. 930 of 1974 provides that 'State agencies' may enter into agreements and refers to such State agencies as those created by statute or Executive Order. This is the closest I can discover that such agencies have any legal standing and that consideration does not obviate the conclusion that they are still, in my view, mere organizational arms of the Governor's Office.

With best wishes,  
Cordially,

Daniel R. McLeod  
Attorney General

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