

1975 WL 28999 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 Any requirement by the rules of the Merit System Council which grants member agencies the authority to approve or disapprove amendments is contrary to state law.

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QUESTION PRESENTED:

Whether a portion of the rule and regulations for a single cooperative interagency merit system which requires member agencies approval of amendments is in accordance with state law.

STATUTES, CASES, ETC. INVOLVED

[Banks v. Batesburg Hauling](#), 24 S.E.2d 496, 203 S.C. 273

[Piedmont v. Northern Railway Company](#), 24 S.E.2d 353, 202 S.C. 207

[Sutherland on Statutory Construction](#), Volume 1A, Section 31.02, pages 354-355

South Carolina Acts and Joint Resolutions, 1974, page 2085 (Section 1-49.31, et seq., Code of Laws, 1962, as amended)

[Lake v. Mercer](#), 58 S.E.2d 336, 216 S.C. 391

DISCUSSION OF THE ISSUES

The 1974 Act establishing a Merit System Council provided for a single interagency merit system for the administration of a uniform nonpartisan procedure of personnel administration for grant-in-aid agencies. The statute further provided that the rules and regulations of the various agencies involved should be combined into one single merit system plan to be approved by a majority of the respective agencies. (Act No. 960, Section 5(2). The Act further states that 'the agencies served shall have the right to be represented at all meetings of the council but such representation will be without voting power.' The rules and regulations referred to have been adopted which reads in part as follows:

When it appears to be desirable in the interest of efficient administration, an agency or agencies may request amendment(s) to the Rule; the authority for making such amendment(s) shall be the Merit System Council, after consultation with all affected agencies. (This in no way infers that Council may amend the Rule without approval of a majority of the agencies served.)

It is settled law in this State that administrative agencies, when authorized, must only implement the statutory law of this State and may not materially add to or alter the law. [Banks v. Batesburg Hauling](#), 24 S.E.2d 496, 203 S.C. 273; [Piedmont v. Northern Railway Company](#), 24 S.E.2d 353, 202 S.C. 207. This is in accordance with the general rule that the validity of a 'rule and regulation must be within the authority of the agency and must have been adopted according to the procedure prescribed by statute. . . . The legislative act is the charter of the administrative agency and administrative action beyond the authority conferred by statute is ultra vires' and that part of the regulation would be void. [Sutherland on Statutory Construction](#), Volume 1A, Section 31.02, pages 354-355; [Lake v. Mercer](#), 58 S.E.2d 336, 216 S.C. 391.

CONCLUSION

It is apparent that the legislation on its face does not intend for the agency to have voting power in the Council and any attempt to invest voting power by means of the rules and regulations of the Council would be contrary to state law and necessarily void. It is therefore the opinion of this Office that the rules should be amended in order to be in compliance with the statute.

*2 [Stephen T. Savitz](#)
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