

1975 S.C. Op. Atty. Gen. 191 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4116, 1975 WL 22412

Office of the Attorney General

State of South Carolina

Opinion No. 4116

September 15, 1975

***1** A county alcohol and drug abuse commission cannot pay a private organization to house and treat addicts where such private treatment is provided in a racially discriminatory fashion.

TO: Joseph H. Earle, Jr.
Greenville County Attorney

QUESTION PRESENTED:

Can the Greenville County Commission on Alcohol and Drug Abuse pay a private organization to house and treat addicts when the organization only provides such services in a discriminatory fashion?

STATUTES, CASES, ETC:

South Carolina Constitution, Article 1, Section 3; [United States Constitution, Amendment 14, Section 1](#); [Rackley v. Orangeburg Regional Hospital](#), 238 F. Supp. 512; [Simkins v. Cone Memorial Hospital](#), 323 F. 2d 959; [Henry v. Greenville Airport Commission](#), 279 F. 2d 751; [Gilmore v. City of Montgomery](#), 417 U. S. 556, 41 L. Ed. 2d 304, 94 S. Ct. 2416; [Evans v. Newton](#), 382 U. S. 296, 15 L. Ed. 2d 373, 86 S. Ct. 486; [Moose Lodge v. Irvis](#), 407 U. S. 163, 32 L. Ed. 2d, 92 S. Ct. 1965.

DISCUSSION OF ISSUES:

Assuming that a county substance abuse commission can validly exercise its statutory function by contracting with a private entity to provide treatment for addicts, such treatment nevertheless must be provided in a non-discriminatory fashion.

In [Rackley v. Orangeburg Regional Hospital](#), 238 F. Supp. 512, the Court held that a public hospital could not segregate its patients on the basis of race and cited [Simkins v. Cone Memorial Hospital](#), 323 F. 2d 959. In the [Simkins](#) case the Fourth Circuit found that private hospitals receiving federal and state aid were sufficiently involved with state action to be within Fifth and Fourteenth Amendment prohibitions against racial discrimination. [Simkins](#), *supra* at page 968, states:

... And it is, of course, clear that when a State function or responsibility is being exercised, it matters not for Fourteenth Amendment purposes that the ... [institution actually chosen] would otherwise be private: the equal protection guarantee applies.

[Simkins](#) also went on to hold that the governmental sanction of the discrimination need not reach the level of compulsion to cause otherwise private discrimination to become 'state action.'

The U. S. Supreme Court reiterated in [Gilmore v. City of Montgomery, Ala.](#), 417 U.S. 556, 41 L. Ed. 2d 304, 94 S. Ct. 2416, that the Fourteenth Amendment proscribes state action of any kind that operates to deny any citizen the equal

protection of the laws. The Supreme Court in Gilmore also cited Evans v. Newton, 382 U.S. 296, 15 L. Ed.2d 373, 86 S. Ct. 486 as holding the proscription on state action applies de facto as well as de jure because conduct that is formally private may become so entwined with governmental character as to become subject to constitutional restrictions placed on state actions.

The case of Moose Lodge v. Iris, 407 U. S. 163, 32 L. Ed. 2d 627, 92 S. Ct. 1965 indicates the extent of state ‘sanction’ which may be given constitutionally to a private organization. In Iris, the discriminatory group was not publicly funded and only served its members and not the general public. The only state contact was the granting of a liquor license, and the Supreme Court held this was not sufficient state action to violate the Fourteenth Amendment. Also the Iris court found that the Moose Lodge was not located and operated in such surroundings that although private in name, it discharged a function or performed a service that would otherwise be performed by the State.

*2 In the instant fact situation the private group is receiving state funds and is providing a service which would otherwise be performed by the County Commission itself. Under these conditions constitutional restrictions prevent state payment of funds to a private organization which performs a State function in a discriminatory fashion.

CONCLUSION:

It is in violation of the Equal Protection clauses of the State and Federal Constitutions for the Greenville County Alcohol and Drug Abuse Commission to pay a private organization to perform rehabilitation and detoxification services in a racially discriminatory fashion.

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