

1973 S.C. Op. Atty. Gen. 218 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3570, 1973 WL 21027

Office of the Attorney General

State of South Carolina

Opinion No. 3570

July 13, 1973

***1 In Re: Examination of Applicants for Driver Licenses, Necessity of Filing Minimum Standards With Secretary of State**

Captain H. C. Fennell
Chief Driver License Examiner
State Highway Department
P. O. Box 1498
Columbia, South Carolina

Dear Captain Fennell:

You have inquired whether or not the Department is required to promulgate and file with the Secretary of State minimum standards required by the Department to be met for issuance of a driver license.

The generally accepted rule relating to issuance of licenses by administrative agencies is that the General Assembly may not delegate to such agency the unrestricted right to determine who shall be licensed, but that the legislative body must provide a general framework within which the agency must operate. It is not required, however, that every detail of such standards be set forth. Annotation [92 A.L.R. 400](#). This the General Assembly has done with respect to the standards to be used by the Department in determining who shall be qualified to receive a driver license. Section 46-162, 1962 Code of Laws of South Carolina.

Within the framework provided by Section 46-162, the Department has developed minimum standards that are required to be met by each successful applicant in each of the stress ipecidied by the General Assembly. Your question is whether or not the Department must formerly promulgate and file such minimum standards with the Secretary of State before the Department may apply them in the examination of applicants.

'Rules and regulations' within a constitutional provision requiring administrative rule or regulation to be filed with the secretary of state before becoming effective embodies two essential components:

1. That the pronouncement be the equivalent of a statute enacted by the general assembly.
2. That the pronouncement (rule or regulation to be promulgated) formulate a standard of conduct for the future to be applicable to all those coming within its purview. Ref.: 37A [Words and Phrases](#) 98, Supp.; [People v. Widelits](#), 239 N.Y.S. 2d 707.

Examplee of rules and regulations of agencies that must be lawfully promulgated and filed are maximum speed limits imposed by a department of public safety ([People v. Cull](#), 176 N.E. 2d 495), minimum wage orders ([Wirtz v. Lobello](#), 151 N.Y.S. 2d 474), and minimum milk prices ([Port Murray Dairy Co. Appeals](#), 71 A. 208).

It is the opinion of this Office that the formulation and use by the Department of minimum standards, such as those for ability to see, in examination of driver license applicants within a framework as is set forth by the General Assembly in Section 46-162, is not in any sense the equivalent of a statutory enactment or the formulation of a standard of conduct for the future, and does not come within the term 'rules and regulations' required to be formerly promulgated and filed with the Secretary of State.

Yours very truly,

*2 Joseph C. Coleman
Deputy Attorney General

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