

1973 WL 26834 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1973

*1 The Honorable Claude McCain
Chairman
South Carolina Insurance Commission
S. C. Department of Insurance
2711 Middleburg Drive
Columbia, South Carolina 29204

Dear Mr. McCain:

You have inquired whether the Insurance Commission may delegate to its subordinate personnel the duty of receiving evidence and testimony concerning forms and rates for insurance sold in conjunction with the Consumer Finance Law (Section 8-800.12, Code of Laws, 1962, as amended).

I advise that, in my opinion, you may delegate to subordinate officials in the Department the duty of receiving testimony and evidence concerning the matters set forth in the cited statute, but that the Insurance Commission must have before it all of the evidence adduced before that subordinate before rendering its decision upon any particular question. It is not necessary that the Commission itself hear the evidence, but it must have the evidence before it and consider such evidence when rendering its decision. The basis for this conclusion is cited below.

Very truly yours,

Daniel R. McLeod
Attorney General

ATTACHMENT

August 8, 1973

ADDENDUM to letter addressed to The Honorable Claude McCain, Chairman, South Carolina Insurance Commission, dated August 8, 1973:

'Due process of law does not require that the actual taking of testimony be before the same officers as are to determine the matter involved. A hearing is not inadequate or unlawful merely because the taking of testimony is delegated to less than the whole number, or even to a single member, of the administrative tribunal, or to an examiner, hearer, or investigator employed for this purpose, even though such procedure has not been expressly authorized by the legislature. The actual decision must remain with and be made by the body constituted by the legislature, but it may be made on the report of the examining officer or body. * * * Where a hearing is required as a prerequisite to action by an administrative officer, the one who decides must hear. This rule does not, however, preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. But there must be a hearing in a substantial sense, and to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them.' [Pettiford v. State Board of Education](#), 218 S.C. 322, 62 S.E.2d 780.

Daniel R. McLeod
Attorney General

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