

1972 S.C. Op. Atty. Gen. 51 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3259, 1972 WL 20406

Office of the Attorney General

State of South Carolina

Opinion No. 3259

February 2, 1972

**\*1** The regulatory requirement of annual post graduate education prior to granting the relicensure of optometrists constitutes an unconstitutional invasion into the legislative domain.

TO: South Carolina Board of Examiners in Optometry

You have requested that an opinion be rendered by this office concerning the following question: Is the South Carolina Board of Examiners in Optometry legally empowered to enact regulations which would require a fixed number of hours of annual post graduate education prior to granting the relicensure of optometristate?

The Board is empowered by Section 56–1058 of the 1962 Code of Laws of South Carolina, as amended, to ‘prescribe rules and regulations . . . for the examination of applicants for the practice of optometry and as an optician and for the practice of optometry.’ The question raised is whether this statutory section gives the Board power to deny relicensure for the reasons stated above.

It is established law that an administrative agency may be vested with rule making power for the purpose of carrying out the legislative will as expressed in statutory form. [Lee v. Michigan Millers Mutual Insurance Co.](#), 250 S.C. 462, 158 S.E.2d 774. The statute granting the rule making power must, however, declare the legislative policy and establish principal standards for carrying it out, [Atlantic Coast Line Railroad Co. v. South Carolina Public Service Authority](#), 245 S.C. 229, 234, 139 S.E.2d 911, and arbitrary power or uncontrolled discretion is generally precluded. 2 [Am. Jur.](#) (2d) [Administrative Law](#), Sections 191 and 192 at pages 22 and 23. The administrative agency's discretionary power must be exercised only in accordance with the standards prescribed by statute, [Hodge v. Pollack](#), 223 S.C. 342, 75 S.E.2d 752, and only to ‘fill up the details’ to insure the complete operation and enforcement of the law. [Heywood v. South Carolina Tax Commission](#), 240 S.C. 347, 126 S.E.2d 15.

The power set forth in Section 56–1058, as amended, ‘to prescribe rules and regulations . . . for the practice of optometry,’ to be legally effective could only be exercised within the scope of the previously established statutory guides. To construe this provision as a grant of power to promulgate rules denying relicensure for failure to acquire post graduate education would appear to extend beyond the realm of administrative rule making power. This, it is felt, would surpass the statutory bounds established for the practice of optometry and would approach the unconstitutional delegation of legislative power as was expressed in the case of [South Carolina State Highway Department v. Harbin, et al.](#), 226 S.C. 585, 86 S.E.2d 460.

It is, therefore, the opinion of this office that the quoted provisions of Section 56–1058 of the 1962 Code, as amended, do not empower the South Carolina Board of Examiners in Optometry to enact rules providing for post graduate education and deny licensure if such is not complied with.

**\*2** This opinion appears to be reinforced when it is observed that the legislature act forth qualifications for registry as an optometrist in Section 56–1062, as amended, and grounds for revocation or suspension in Section 56–1077, as amended. The proposed regulation would in effect create more astringent qualifications for registration of an optometrist and would create an additional ground for suspension or removal, thus in both instances, invading the legislative domain. The denial of a relicensure having the same practical effect as a revocation, it is felt that the holding of of the South Carolina Supreme Court in the case of [Wagner v. Ezell](#), 249 S.C. 421, 154 S.E.2d 731, ‘In no event could the Board revoke a license because of a violation of a rule it promulgated,’ would still hold true.

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