1972 WL 25213 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 22, 1972

***1** Senator James B. Stephen
South Carolina State House
Columbia, South Carolina

Dear Senator Stephen:
You have requested that this office advice you as to the legality of the proposed amendment to Section 32–781.1 of 'The State Hospital Construction and Franchising Act,' which reads,
Section 32–781.1 shall not apply to any project which has reached the state or a signed contract for construction at the time this Act takes effect provided that the construction is not undertaken for the purpose of changing the scope of licensed services.

It is clear that in this state the acts of a state legislature do not bind the power of future legislatures. Boatwright v. McElmurray, 247 S.C. 199, 146 S.E.2d 716. The present legislature, subject to constitutional limitations, has plenary power to amend or repeal statutes, Toomer v. Witsell, 73 F. Supp. 371, and the amended statute must be construed as if the original statute were repealed and a new and independent act in amended form adopted. Independence Insurance Company v. Independent Life and Accident Insurance Company, 218 S.C. 22, 61 S.E.2d 399.

The proposed amendment adds the proviso, 'provided that the construction is not undertaken for the purpose of changing the scope of licensed services.' This proviso in effect places limitations on the exempting provisions of Section 32–781.1, as amended, and would exclude those construction projects which contemplate a change in the type health services rendered. The proposed amendment, relating to health care facilities, is well within the police powers of the state, for as is stated in 40 Am. Jur. 2d Hospitals and Asylum, Section 4 at 853,
It is well recognized that the operation of an institution for the shelter, feeding, and care of sick, aged, or infirm persons bears a reasonable relation to the health, safety, and welfare of the community and is thereby subject to licensing and regulation as a valid exercise of the police power.

In the matter of police regulation, the powers of the state are exceedingly broad, and laws enacted for that purpose may be impolite, harsh, and oppressive without contravening the constitutional inhibition. Southern Bell Telephone and Telegraph Company v. Town of Calhoun, 287 F. 381. It necessarily follows that the state may in the exercise of its police powers enact law which have an incidental effect upon contract or property rights, even though such rights are diminished or destroyed. St. Louis Poster Advertising Company v. St. Louis, 249 U.S. 269, 39 S. Ct. 274, 63 L. Ed. 599. The fact that the present law before the proposed amendment would exempt a greater number of projects from the 'Franchising Act' does not invalidate the proposed amendment. As is stated in the United States Supreme Court Case of Queenside Hills Realty Company v. Saxl, 328 U.S. 80, 66 S. Ct. 850, 90 L. Ed. 1090,
The police power is one of the least limitable governmental powers, and in its operation often cuts down property rights . . .. But in no case does the owner of property acquire immunity against the exercise of the police power because he constructed it in full compliance with the existing laws,

***2** See also Engelsher v. Jacobs, 157 N.E.2d 626.

It is therefore the opinion of this office, based upon the foregoing authorities and reasoning, that the present legislature has the power to amend present Section 32–781.1 and that the amendment proposed is within the police power of the state. The fact that its enactment may incidentally affect contract or property rights acquired prior thereto has no bearing on the validity of the proposed amendment.

I trust this will be sufficient to answer the question which you posed. If we may be of any further assistance, please do not hesitate to call or write.
Very truly yours,

Timothy G. Quinn
Assistant Attorney General

1972 WL 25213 (S.C.A.G.)

End of Document