

## OFFICE OF THE ATTORNEY GENERAL



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Honorable Danny Corbett  
State Senator  
Route 7, Box 821  
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Administrative Procedure -  
Rules and Regulations -  
Effective Date

Rules of an administrative agency subject to the Alabama Administrative Procedure Act cannot be effective prior to the time set forth in the act unless passed under emergency provisions. Nominations made prior to effective date may be accepted.

Dear Senator Corbett:

You have requested of this office an opinion respecting the effective date of a rule passed pursuant to the Administrative Procedures Act, and the effect of nominations made under such a rule prior to the effective date of the rule.

Specifically, you have reference to a rule passed by the Alabama Board of Dental Examiners after a public hearing in Birmingham on June 15 of this year. The rule was published on June 24 as required by the Alabama Administrative Procedure Act, §41-22-6(b), Code of Alabama 1975. The rule provides for a dental hygiene advisor to the Board of Dental Examiners to be selected by a nomination process which included a provision that nominating petitions be submitted to the Board of Dental Examiners no later than the first day of July in the year of election. The rule provides that there shall be such an advisor beginning on October 15, 1985.

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It would appear, then, that the intent of the Board was that there be such an election in 1985 so that there can be such an advisor beginning October 15, 1985.

You point out that §41-22-6(c), Code, supra, provides that a rule shall become effective thirty-five days after filing with the Legislative Reference Service and that, therefore, the rule was not effective on the first day of July, 1985, the deadline for nomination set forth in the rule.

You are correct that a rule adopted pursuant to the Administrative Procedure Act becomes effective thirty-five days after filing with the Legislative Reference Service, unless it was enacted as an emergency rule under the provisions for the same in the act. §41-22-6(c), Code, supra. As the rule in question was not an emergency rule, its effective date is thirty-five days after the date it was filed with the Legislative Reference Service, to-wit: June 24, 1985, giving an effective date of July 29, 1985.

Given the fact that the rule was not effective on the date set within its terms as the last date for nominations, it is the opinion of this office that such nominations should be received by the Board of Dental Examiners for a reasonable period subsequent to the effective date of the rule, and we suggest that such a reasonable period of time would be thirty days, or until August 29, 1985. However, nominations made under the rule and submitted to the Board prior to July 1, 1985 should still be considered as proper nominations, as they were made prior to the closing date for nominations.

I trust that the foregoing answers your questions. If this office can be of further service to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK  
Attorney General

By-



PHILIP C. DAVIS  
Assistant Attorney General

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