

COMMONWEALTH OF VIRGINIA  
OFFICE OF  
THE ATTORNEY GENERAL  
RICHMOND 23219

May 12, 1982

C  
The Honorable Charles S. Robb  
Governor of Virginia  
State Capitol  
Richmond, Virginia 23219

Dear Governor Robb:

O  
This letter is in response to your request for a recommendation concerning the Commonwealth of Virginia's re-entry into the Federal Developmental Disabilities Program. We have looked at the legal aspects of the program as requested.

P  
Approximately three percent of Virginia's population is developmentally disabled. These citizens require both specialized services and treatment. Because one of the goals of your administration is that every disabled person be afforded the dignity and quality of life that is the right of every citizen, it is mandatory that a concerted effort be made to meet the specialized needs of this segment of Virginia's population. Accordingly, it is the recommendation of this office that Virginia reenter the Federal Developmental Disabilities Program.

Y  
This recommendation is subject to two conditions. The first concerns the authority of the State Advocacy Office for the Developmentally Disabled (State Advocacy Office) to sue another state agency, and the second involves an employee protection plan proposed by the federal program.

As you are aware, it has long been the law and the policy of the Commonwealth that the legal needs and services of agencies are determined by the Attorney General. For a brief time in the past, the State Advocacy Office was free to determine its own legal needs and to initiate legal action in the courts against other state agencies; that authority, in theory, included the power to sue the Governor. We do not believe such authority is warranted or in the best interest of the Commonwealth.

By law the State Advocacy Office must be independent.

of any state agency that provides services to the developmentally disabled; we recommend, however, that, if you authorize reentry into the federal program, you require of the State Advocacy Office that it notify the Governor and Attorney General and obtain written approval from both officials before initiating litigation against an agency that provides services to the developmentally disabled. This requirement would still permit the State Advocacy Office to pursue legal, administrative, and other remedies, as mandated by federal law and would enable this office to ensure that the welfare of the Commonwealth and its developmentally disabled citizens is adequately protected.

The second condition of this recommendation involves the federal requirement for an employee protection plan in the proposed revision of the federal regulations. Under the proposed federal plan, displaced employees would have the right to transfer to a job in other state or local government departments. In addition, these employees would be entitled to relocation expenses when the new job was more than fifty miles from the previous employment. These provisions of the proposed plan constituted one of the factors which led to Virginia's withdrawal from the federal program in 1980. Although the proposed federal regulations have been withdrawn, this office would suggest that the Commonwealth reevaluate its position in the event that the same or a similar provision is incorporated in any subsequently approved regulations.

Please contact me if you have any additional questions.

Sincerely,

Gerald L. Baliles  
Attorney General

6:15/169

cc: The Honorable Joseph L. Fisher ✓  
Secretary of Human Resources

Jordan H. Goldman  
Staff Assistant  
Office of the Governor