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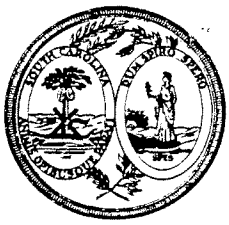

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 8, 1999

The Honorable Warren K. Giese
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Giese:

Attorney General Condon has forwarded your opinion request to me for reply. You have asked whether a district commissioner of the South Carolina Department of Transportation may be elected to and serve a second consecutive four-year term.

This question has been addressed in previous opinions of this Office. See Ops. Atty. Gen. dated May 15, 1997, May 9, 1997, February 25, 1996 and September 20, 1995. In the February 20, 1996 opinion to the Honorable Thomas G. Keegan, we advised the language contained in Section 57-1-320(B) ("[n]o county within a Department of Transportation district shall have a resident commissioner member for more than one consecutive term ...") meant that a district commissioner of the South Carolina Department of Transportation could not serve consecutive terms but would be limited to serving one term only, unless another commissioner's term intervenes. In the opinion, it was stated:

> I am of the opinion that the language in §57-1-320(B) relative to not serving more than one consecutive term means serving one term. By way of comparison, a municipal ordinance examined in Great South Fair v. City of Petal, 548 So.2d 1289 (Miss. 1989), provided that a carnival or fair with the specified number of mechanical rides could operate "not more than one (1) consecutive day" in the city. The ordinance challenged therein was interpreted to mean that the carnival or fair could operate for only one day. Applying that reasoning to the instant case, I would interpret the language of §57-1-320(B) to mean that a county may have representation for one term and one term only, but that representation may return to that county after representation has rotated to another county for at least one term. Because representation is to

> rotate from county to county, the commissioner may not succeed oneself but may serve again at a later date, when the rotation returns to his or her county (assuming the delegations were to re-elect the individual).
>
> ...
>
> I am still of the opinion that the obvious legislative intent was to place a limitation on the number of terms that a commission member may serve on the commission, namely, one. This legislative intent would be effectuated by limiting the designated appointive members of the initial commission to serve either their two year term or four year term, as may be appropriate depending on which congressional district they represent. While a commissioner representing one of the congressional districts may therefore not succeed himself, certainly at some time in the future that individual would be eligible to serve another non-consecutive four year term on the commission when the rotation returns to his or her county.

Since the issuance of the previously cited opinions, no legislative changes have been forthcoming. It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 374 A.2d 43 (1977); Op. Atty. Gen. dated April 18, 1996. Accordingly, the previously cited opinions which conclude that a district commissioner may serve only one term unless another commissioner's term intervenes remain the opinions of this Office.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

Paul M. Koch
Assistant Attorney General