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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 15, 2004

A. Cruickshanks, IV, Esquire
Laurens County Attorney
P. O. Box 786
Clinton, South Carolina 29325

Dear Mr. Cruickshanks:

In a letter to this office you referenced the provisions of Laurens County Ordinance No. 147 of 1982 which consolidated the two hospital districts in Laurens County into one district known as the Laurens County Health Care System (LCHCS). You indicated that consolidation was accomplished pursuant to requirements of the State Code dealing with special purpose districts. The result of Ordinance No. 147 was the creation of a single special purpose district with a governing body, the Board of Directors, composed of nine members as the supervising organization. You have questioned whether Laurens County Council has the authority to amend Ordinance No. 147 so as to change the nomination process and length of terms for Board members and to establish a Board of seven members, one each to be nominated from the seven single member districts in the County.

S.C. Code Ann. § 6-11-610 (2004) provides:

If the county board shall have found that by reason of its action in enlarging, diminishing or consolidating, there should be a new commission or changes made in the personnel of the old commission for the special purpose district to result from its action in order to provide for the proper functioning of the special purpose district, then in such event it shall advise the Governor of its recommendations. The number of commissioners shall be not less than three nor more than nine. All members of any commission so altered shall hold office for terms to begin upon their appointment and to end two years from the January first following the date of the action of the county board, and the term of all other members of the commission shall extend to and end on such date. All new members to any commission shall be appointed by the Governor upon recommendation of a majority of the legislative delegation of the county, including the resident Senator or Senators, if any. Vacancies in office shall be filled in like manner for the balance of the term of the person whom the appointee is replacing. Following the expiration of the term of office of all members of the commission (whether appointed pursuant to this article or otherwise) successors shall be appointed in the manner provided by this section. All members of any commission

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shall hold office until their successors shall have been appointed and shall have qualified.

As you noted in your letter, a prior opinion of this office dated May 23, 1985 referenced the ordinance consolidating the two hospital districts in Laurens County into the Laurens County Health Care System. The question was raised as to whether the County could further alter the composition of the governing body of the new district, change the term a member serves or the method of selection of the membership. In responding to the question, reference was made to Section 6-11-610 in commenting that "(s)uch changes would be controlled by the terms of Section 6-11-610...." It was further indicated that

It could be argued that Council has no authority to alter the governing body's composition, terms, and so forth pursuant to Section 6-11-610 since Council has not further altered the new district since the ordinance was implemented in 1982. However, such an argument would most probably not be successful since there are no terms in Section 6-11-610 to limit Council to only one change in the governing board after consolidation has been effected.

(emphasis added). Consistent with such opinion, it is my opinion that the Laurens County Council could amend Ordinance No. 147 in a manner consistent with Section 6-11-610. Such would include the composition of a Board of seven members, each to be nominated from single member districts. Moreover, as to the nomination process, such would include the requirement that new members shall be appointed by the Governor upon recommendation of a majority of the legislative delegation of the county, including the resident Senator or Senators, if any. As to the appointment process, consistent with Section 6-11-610, the Governor only makes the appointment; the majority of the legislative delegation makes the recommendation of the appointment. In so doing, the Governor has no discretion as to the appointment. In Blalock v. Johnston, 180 S.C. 105, 185 S.E. 51, 53 (1936), the Supreme Court determined as to similar language dealing with the appointment of a county official which was to be made by the Governor upon the recommendation of a majority of the legislative delegation from that county that

(t)he law imposes the positive duty upon the Governor to make the appointment at a time and in a manner upon conditions which are specifically designated. It is a simple definite duty arising under conditions admitted or proved to exist, and it leaves nothing to his discretion. It is ministerial.

See also: Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996).

You also referenced the provisions of Act No. 729 of 1990 which provides that:

Members of the board of directors of the Laurens County Health Care System must be appointed by the Governor upon the recommendation of the Laurens County

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Council. When a vacancy occurs on the board, the board shall recommend to the Laurens County Council the name of a person to fill the vacancy. Council shall within sixty days of receiving the recommendation either approve it and forward the recommendation to the Governor or disapprove the recommendation. If Council disapproves the board's recommendation, the board shall submit another recommendation to Council within thirty days of the disapproval; otherwise Council may make its own recommendation to the Governor.

In an opinion of this office dated June 4, 1990 this office dealt with the question of the constitutionality of such Act. It was noted that Act No. 729 was an act for a specific county. Article VIII, Section 7 of the State Constitution provides that "(n)o laws for a specific county shall be enacted." Referencing such, the opinion concluded that Act No. 729 was of doubtful constitutionality. See also: Cooper River Parks and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976). Act No. 729 was vetoed by the Governor but the veto was overridden by the General Assembly.

You have asked what legal effect, if any, does Act No. 729 have upon Ordinance No. 147 and the nomination process for Board members of the Laurens County Health Care System. Based upon your letter and accompanying memorandum, it is apparent that Act No. 729 is not being followed and, instead, Ordinance No. 147 is the controlling authority. In my opinion, consistent with the conclusion by this office that the Act No. 729 is of doubtful constitutionality, reliance should not be made on its provisions. Instead, pending amendment of Ordinance No. 147 consistent with the provisions of Section 6-11-610, Ordinance No. 147 would continue to control.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General