

February 2, 2007

Montye M. DuBose, Member  
Commission for the Blind Board  
P. O. Box 174  
Ehrhardt, South Carolina 29081

Dear Ms. DuBose:

In a letter to this office you indicated that recently you were removed as chairman of the board of the State Commission for the Blind. You indicated that you were told that such removal was based upon allegations that you had overstepped certain boundaries in questioning actions of the Commission.

S.C. Code Ann. § 43-25-10 provides for a seven member Commission for the Blind. Such provision states in part that “[t]he members of the Commission shall elect one of its members as chairman for a term of two years or until his successor has been elected.”

I have not found any case law in this State directly on point as to the removal of a chairman from his or her elected office where a specific term has been established by statute. However, in this instance, there is a set term established for the chairman position, i.e., “...a term of two years or until his successor has been elected.” It appears that the language “or until his successor has been elected” should be read in association with the general rule that an officer holds over until his successor has been elected. See: Op. Atty. Gen. dated April 18, 1986. Such is also consistent with the general rule as expressed in an opinion of this office dated April 1, 1999 that “...statutes should not be construed to shorten the terms of incumbents.” An opinion of this office dated July 25, 1980 dealt with the construction of a regulation that provided that a particular board was to elect a chairman “...who will serve for a two year term or until his successor is elected.” That opinion recognized the holding over by the office holder until the election of a successor.

As to the removal of an officer, as stated in an opinion of this office dated June 27, 2005 “...[i]f an officer holds office for a fixed term, summary removal is not authorized....” That opinion also stated that

[t]he right to hold an office during a fixed term unless removed for cause may be overcome only by an unequivocal grant of power from the Legislature to remove at pleasure.

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In your situation, there is no specific grant of authority to remove you as chairman at pleasure. Instead, a term of two years and until your successor has been elected is established. Inasmuch as a set term is provided, you may be removed only for cause. As stated in an opinion of this office dated July 1, 1999

[w]here an officer...can be removed only for cause either for the reason that he holds for a term fixed by law, or during good behavior, or that a constitution or statute so provides, it is generally held that the power granted is not arbitrary to be exercised at pleasure, and the power can be exercised only after notice and opportunity to be heard.

That opinion cited the decision in Walker v. Grice, 162 S.C. 29, 159 S.E. 914 (1931), where the court concluded that

...[a] removal for cause operates as a limitation upon the power to remove, and, in our opinion, the party to be removed, or attempted to be removed, is entitled to a hearing as to the charge that he has failed to perform his duty.

See also: Op. Atty. Gen. dated April 1, 1999 (“...where a term of office is fixed by law, due process rights of notice and an opportunity to be heard attach to any decision to remove.”). Consistent with such, it appears that you were elected as chairman for a fixed term, a term of two years and until your successor has been elected, and may be removed from such office only for cause. Included in any such removal is the requirement of notice and an opportunity to be heard. As to your recourse in this instance, if the action of the Commission is not reversed in keeping with such requirements, you may wish to consider a declaratory judgment action with regard to your position as chairman.

With kind regards, I am,

Very truly yours,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General