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HENRY McMASTER
ATTORNEY GENERAL

February 16, 2006

The Honorable Catherine Ceips
Member, House of Representatives
326A Blatt Building
Columbia, South Carolina 29211

Dear Representative Ceips:

In a letter to this office you referenced S.C. Code Ann. § 7-9-60 which provides for the qualifications to vote on a county executive committee of a political party within this State. Such provision states:

The clubs in each county shall be held together and operate under the control of a county committee, which shall consist of one member from each club to be elected by the club and shall also include the State Executive Committeeman from such county. The committee, when elected, shall appoint its own officers (except the chairman, who shall be elected by the county convention), who shall not necessarily be members of the committee...An officer of the county committee who is not a member of the committee shall not be entitled to vote on any question, except the chairman and then only in case of a tie vote. The tenure of office of the committee shall be until the day of the county convention in each general election year.

You cited the proposed Rules of the Beaufort County Republican Party (BCRP) which state:

Each Regional Director shall have a vote on the County Executive Committee.
BCRP Rules, Article VII(3)(d), Officers.

Area Managers of each respective area shall be appointed to serve under each Regional Director. Each shall be appointed by the County Chairman on recommendation of the Regional Director and, to the maximum extent practicable, each shall be recruited from the ranks of Executive Committeemen from precincts within the area in which they serve. If an Area Manager is not otherwise an Executive Committeeman, he shall have a vote in the County Executive Committee.
BCRP Rules, Article VII(3)(e), Officers.

The precincts in the County shall be operated under the control of the County Executive Committee, the membership of which shall consist of one (1) committeeman from each precinct (elected by that precinct), the elected officers¹ of the Party, and any Regional Director or Area Managers who are not elected committeemen, with each member having one vote.
BCRP Rules, Article VIII(1), County Executive Committee.

Referencing such, you have asked whether the proposed BCRP Rules conflict with the requirements of Section 7-9-60 regarding the eligibility of members of a political party's county executive committee to vote on any question. You also questioned the legality of votes taken on a county's executive committee contrary to the voting requirements of Section 7-9-60.

Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

In reviewing your question, certain conclusions should be noted. S.C. Code Ann. § 7-9-30 provides that "(o)ne party club may be organized in each general election voting precinct...." Pursuant to Section 7-9-60, "(t)he clubs in each county shall be held together and operate under the control of a county committee, which shall consist of one member from each club to be elected by the club and shall also include the State Executive Committeeman from such county...." As further set forth by Section 7-9-60, an executive committee appoints its own officers "who shall not necessarily be members of the committee". An officer of a county committee who is not a member of the committee cannot vote on any matter before the committee except the chairman and then only in the event of a tie vote.

¹The term "officer" is defined in Article V of the referenced Rules as "...those officers of the Party at the County level, duly elected or appointed, other than the County Executive Committeemen." Pursuant to Article VII, "elected officers of the Party" are a chairman, a vice chairman, six regional directors, a recording secretary, a corresponding secretary, a treasurer and a state executive committeeman.

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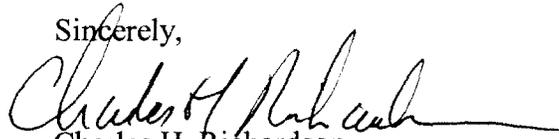
You first asked whether the rules in Article VII in providing that a regional director and an area manager have a vote on the county executive committee violate Section 7-9-60. Also, as set forth by Article VIII(1) of the BCRP rules, the membership of a "county executive committee" is composed of "...one (1) committeeman from each precinct (elected by that precinct), the elected officers of the Party, and any Regional Director or Area Managers who are not elected committeemen..." Section 7-9-60 in authorizing county committees provides only that the committee "shall consist of one member from each club to be elected by the club and shall also include the State Executive Committeeman from such county." Reference is also made to officers of the county committee. However, it is specified that unless the officer is also a member of the committee, he is not entitled to vote except on the question of chairman and then only in the event of a tie. Therefore, neither regional directors nor area managers are specifically designated as committeemen or as officers of a county committee by such statute. Moreover, there are no separate provisions in Section 7-9-60 authorizing regional managers or area managers to have a vote. Therefore, in my opinion, unless the holders of these two positions also fall within the criteria of being "one member from each club" or a State Executive Committeeman, therefore qualifying as a "member of the committee", to the extent that the referenced rules provide for these two positions to have a vote, they are in conflict with Section 7-9-60. Similarly, in my opinion, Article VIII(1) of the referenced Rules conflicts with Section 7-9-60 to the extent that such provision authorizes elected officers, regional directors or area managers who are not elected committeemen to have a vote. As specifically provided by such statute, only members of the committee may vote. As noted previously, members of the committee are composed of "one member from each club to be elected by the club" and the State Executive Committeeman. Therefore, in my opinion, the referenced rules can be interpreted as being in conflict with Section 7-9-60 unless the individual serving on the committee is otherwise qualified.

As to your question concerning the legality of votes taken by a county's executive committee contrary to the voting requirements of Section 7-9-60, to the extent the rules provide for voting privileges inconsistent with State law, they could be considered void. Connor v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E.2d 608 (1994); State v. Solomon, 245 S.C. 550, 141 S.E.2d 818 (1965). However, any conclusion would be dependent on the facts surrounding a particular vote. For example, if the result of any vote was not dependent on the votes of the individuals determined not eligible for membership on the county committee, arguably, the vote could still be upheld. Moreover, any votes taken, even if taken by a county committee illegally constituted, could be considered votes of a de facto body and presumed valid. Generally, when a position is created and an individual assumes the position pursuant to a presumably valid appointment, that individual would be considered as holding the position in at least a de facto capacity. Unless and until a court would declare otherwise, actions of de facto members are considered valid. See generally, State ex re. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1978); Op. Atty. Gen. dated October 14, 1988.

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If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General