

June 6, 2007

Sarah Forbes-Jones, Esquire
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Dear Ms. Forbes-Jones:

In a recent letter to Attorney General Henry McMaster, you provided the following information:

The Office of the Governor must make appointments to the Lower Florence County Hospital Board of Directors upon the recommendation of the Florence Legislative Delegation or the Florence County Council. The Governor's Office has been taking the recommendation of the Florence County Council for many years pursuant to Act No. 27 of 1975. However, it has come to our attention that there are somewhat conflicting prior Attorney General's Opinions regarding this issue.

Thus, you desire clarification as to "whether county councils are precluded from only appointing members to the governing board of a special purpose district, or precluded from both appointing and recommending members." Specifically, you wish to know "whether the Governor appoints to the Lower Florence County Hospital Board of Directors upon the recommendation of the Florence Legislative Delegation or the Florence County Council."

Law/Analysis

The Legislature created the Lower Florence County Hospital District (the "District") by act 1095 of 1962. 1962 S.C. Acts 2683. As part of this act, the Legislature established the Board of Directors for the District (the "Board"). Id. With regard to appointments to the Board, the Legislature provides as follows: "Initial appointments shall be made by the Governor, upon the recommendation of a majority of the legislative delegation, including the Senator, from Florence County." Id. Furthermore, the act states: "Upon expiration of the terms of office of those first appointed, successors shall be appointed by the Governor, for terms of five years, in the same manner of original appointment." Id.

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As you mentioned in your letter, in 1975 the Legislature enacted a piece of legislation amending the appointment powers of the Florence County Council (“County Council”). 1975 S.C. Acts 23. This provision states:

Effective July 1, 1975, all appointive powers and powers of recommendation for appointments vested in the county legislative delegation for county officials, boards, committees and commissions not otherwise provided for by the general law or the Constitution of this State are devolved upon the county council.

Id.

In your letter, you mentioned several opinions of this Office dealing with County Council’s power to recommend and appoint members to the Board. In an opinion dated November 21, 1975, we concluded: “The County Council may recommend for appointment all five members of the Board.” Op. S.C. Atty. Gen., November 21, 1975. In a subsequent opinion, issued in 1981, we found County Council cannot appoint members to the Board or the District’s advisory board “because together they constitute the governing body of a special purpose district.” Op. S.C. Atty. Gen., September 3, 1981.

In 1990 we considered the related issue of whether County Council may provide by ordinance for the appointment of members to the Board. Op. S.C. Atty. Gen., March 6, 1990. We referenced our 1981 opinion, but further explained that sections 4-9-170 and 4-9-80 of the South Carolina Code preclude “the enactment of an ordinance by Florence County Council with respect to Lower Florence County Hospital Board.” Section 4-9-170 of the South Carolina Code (1986) states:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

(emphasis added). As we concluded in our 1990 opinion, this provision, by its express terms precludes a county council “from exercising appointment powers for the governing body of a special purpose district”

Section 4-9-80 of the South Carolina Code (1986) provides:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly

This provision further clarifies that county councils do not gain any additional authority over established special purpose districts through the powers given to them under chapter 9 of title 4 containing the general provisions governing counties.

Based on the above authority, we continue to find County Council does not have authority to enact an ordinance affecting the Board because the District is a special purpose district. Furthermore, act 27 of 1975 transfers to County Council the appointive powers of the Florence County Delegation (the “Delegation”). Pursuant to the District’s enabling legislation, the Governor, not the Delegation, has the power to appoint the members of the Board. Thus, we continue to opine that County Council is precluded from appointing members to the Board. Accordingly, in keeping with the District’s enabling legislation, members of the Board shall be appointed by the Governor.

Nonetheless, the crux of your request is whether the Delegation or County Council shall make the recommendations to the Governor. As mentioned above, our 1975 opinion indicates County Council may recommend individuals for membership on the Board. Op. S.C. Atty. Gen., November 21, 1975. However, the only authority cited for this proposition is the District’s enabling legislation, which clearly states recommendations for appointments to the Board are to be made by the Delegation.

While act 27 of 1975 states the power to recommend individuals previously held by the Delegation is vested in County Council, in this instance we believe section 4-9-80 precludes the transfer of this authority from Delegation to County Council because the District is a special purpose district. We come to this conclusion because section 4-9-80 clearly states special purpose districts “shall continue to perform their statutory functions prescribed in laws creating such districts . . . except as they may be modified by the Legislature.” We do not believe the Legislature intended to amend the District’s enabling legislation via Act 27. Thus, because the Legislature has not seen fit

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to amend the District's enabling legislation, we are of the opinion that the Delegation, pursuant to the District's enabling Legislation, shall recommend individuals for membership on the Board. While, we do not generally overrule prior opinions of this Office, given our understanding of the law, we believe it is necessary in this instance.

Conclusion

In light of our analysis above, we are of the opinion that the Governor, not County Council, has the authority to appoint members to the Board. Furthermore, we believe individuals considered by the Governor in making such appointments shall be recommended by the Delegation. Thus, we find County Council has neither the power to appoint nor the power to recommend individual's for membership on the Board.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General