

October 22, 2007

The Honorable David R. Hiott  
Member, House of Representatives  
Post Office Box 997  
Pickens, South Carolina 29671

Dear Representative Hiott:

We received your letter requesting an opinion of this Office as to the continued applicability of an opinion issued in 1989 to Senator Isadore Lourie. Based on our analysis below, we believe the findings of the 1989 remain applicable and continue to opine that a court would likely find a county election commission has authority to hire and fire its employees.

### **Law/Analysis**

Chapter 13 of title 7 of the South Carolina Code governs the conduct of elections. As part of these provisions, section 7-13-70 of the South Carolina Code (Supp. 2006) calls for the appointment individuals to county election commissions by the Governor upon the recommendation of the county's senatorial delegation and at least half of the members of the house of representatives members for the respective counties. As noted in our 1989 opinion, neither section 7-13-70, nor any other provision contained in title 7, specifically give commissioners the power to hire and fire a director or other employees. Nonetheless, in our 1989 opinion, we found county election commissions have inherent authority to hire and fire employees. Op. S.C. Atty. Gen., April 6, 1989. We stated as follows:

It is generally recognized that statutory authority "ordinarily is not necessary to enable a public official to appoint sufficient deputies to perform the duties of his office." 67 C.J.S., Officers, Section 278. Such persons generally are appointed "at the pleasure of the appointive authority and their deputation expires with the office on which it depends." Supra.

Based upon this reasoning, this Office has previously determined that because county registration boards are charged with the duty and responsibility of conducting registration, such boards possess the inherent authority to employ clerks etc. to effectuate registration.

1956-58 Op. Atty. Gen., p. 112 (August 17, 1957). This same reasoning would apply to the case of county commissioners of election. Since Section 7-13-70 specifically expresses as its purpose the appointment of county election commissioners in order to carry on the general or special elections provided for in Section 7-13-10, such commissioners would thus possess the authority to appoint a clerk if deemed necessary to carry out the provisions of the election laws. Even though no specific statutory authorization for such appointments can be found, it is logical to conclude, based upon the foregoing authority, that such clerks would be appointed by the election commissioners who are specifically authorized to carry out the purpose of conducting general or special elections.

Id.

Moreover, in our 1989 opinion, we also ruled out the possibility that authority to appoint election commission clerks rests with county council because election clerks are considered county employees. Id.

Section 7-13-70 expressly provides that commissioners of election are appointed by the Governor upon the recommendation of the Senator and at least half of the members of the House of Representative from the county. Since the appointing authority for county election commissioners is by an authority “outside county government”, by Section 4-9-30(7) the General Assembly has mandated that county council possesses no authority in this area, although county election commissioners have been determined in prior opinions of this Office to be county officers. This conclusion is consistent with 1975 Op. Atty. Gen., No. 4196, p. 246 (November 21, 1975) which concluded that the Home Rule Act effects “no change in the functioning or structure” of county election commissioners.

Id. Based on these finding, we concluded that a county election commission has the authority to hire and fire clerks or other employees of the commission. Id.

This Office also issued two opinions in 2005 addressing whether the Georgetown County Administrator has authority over employees of the Georgetown County Board of Elections and Registration. Ops. S.C. Atty. Gen., October 6, 2006; October 11, 2005. In the first of these two opinions, we relied on the presumption provided by the requester that members of the County Board of Elections and Registration were appointed by the county legislative delegation. Based on this fact, we concluded that because the county administrator had no authority over the County Board of Elections and Registration, it had no authority over that body’s employees. Op. S.C. Atty. Gen., October 6, 2005. In the follow-up opinion issued on October 11 of 2005, we considered the County

The Honorable David R. Hiott  
Page 3  
October 22, 2007

Board of Elections and Registration's enabling legislation, which calls for the members' appointments by the Governor upon the recommendation of the Georgetown legislative delegation, and determined for the same reasons as the prior opinion, "the county administrator would have no authority over the employees of the Board." Op. S.C. Atty. Gen., October 11, 2006. In the October 11 opinion, we also cited our 1989 opinion to further support of our determination. Id.

"This Office maintains the policy that we will not overrule a prior opinion, unless it is clearly erroneous or unless the applicable law changed." Op. S.C. Atty. Gen., August 25, 2006. First, we agree with the reasoning provided in our 1989 opinion and do not find it clearly erroneous. Second, we find no significant changes in the underlying law supporting our 1989 opinion that would cause us to change our position on this issue. Since the issuance of our 1989, the Legislature on several occasions amended the provisions contained in chapter 13 of title 7 of the South Carolina Code. Particularly, the Legislature amended section 7-13-70 several times. However, these amendments do not change the fact that the commission members are appointed by the Governor with advice and consent of the house and senate delegations or the fact that the county election commissions are charged with the duty and responsibility of conducting registrations and elections. Thus, consistent with our 1989 opinion, we continue to opine that members of county election commissions have implied authority to hire and fire their employees.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General