



HENRY McMASTER
ATTORNEY GENERAL

June 10, 2009

Linda C. McDonald, Chief Counsel
South Carolina Department of Transportation
Office of Legal Services
P. O. Box 191
Columbia, South Carolina 29202-0191

Dear Ms. McDonald:

In a letter to this office you questioned whether a person who resides in the same county as the sitting at-large member of the State Commission of the Department of Transportation would be eligible for election as a district commissioner.

S.C. Code Ann. § 57-1-310 provides that the congressional districts of this State are constituted and created as the Department of Transportation Districts of this State designated by the numbers of the respective congressional districts. Such provision states that “[t]he Commission of the Department of Transportation shall be composed of one member from each transportation district elected by the delegations of the congressional district and one member appointed by the Governor from the State at large.” S.C. Code Ann. § 57-1-320(B) states that “[n]o county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter.” (emphasis added). S.C. Code Ann. § 57-1-330(B) states in part that

[t]he at-large commission member shall serve at the pleasure of the Governor. The at-large commission member may be appointed from any county in the State unless another commission member is serving from that county.” (emphasis added).

In your letter you stated that Section 57-1-330(B) “...makes it clear that the Governor could not appoint a person as the at-large commissioner from the same county as a seated district commissioner. The question we have is different. Our question is whether a district commissioner could be elected from the same county as the sitting at-large commissioner.”

As you stated, Section 57-1-330(B) is clear in its statement that the Governor may not appoint a person as the at-large commission member from the same county as a seated district commissioner. However, Section 57-1-320(B) states that “...in no event shall any two persons from

Ms. McDonald
Page 2
June 10, 2009

the same county serve as a commission member simultaneously except as provided hereinafter.” (emphasis added). The problem with this statement is the apparent lack of any further statutory exception allowing for two members to be appointed from the same county.

As stated in a prior opinion of this office dated March 4, 2008,

[i]n the construction of statutes, the dominant factor is the intent, not the language of the legislature. A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from the language, the purpose will prevail of the literal import of the statute. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 74, 321 S.E.2d 258, 262 (1984). “[W]ords ought to be subservient to the intent, and not the intent to the words.” Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942).

It appears clear from the wording of Sections 57-1-320 and 57-1-330 cited above that it was the intent of the General Assembly that two persons from the same county not serve as a Commission member. While Section 57-1-320 states that such provision would apply “except as provided hereinafter”, there is no further provision with which I am aware setting forth an exception. Therefore, it is the opinion of this office that no person who resides in the same county as the sitting at-large member of the State Commission of the Department of Transportation would be eligible for election as a district commissioner. However, admittedly, because of the ambiguity of Section 57-1-320, consideration could be given to seeking a declaratory judgment to resolve this issue with finality.

With kind regards, I am,

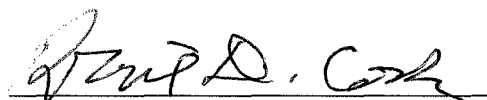
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General