



HENRY McMASTER
ATTORNEY GENERAL

December 8, 2008

The Honorable Mike Fair
Senator, District No. 6
P. O. Box 14632
Greenville, South Carolina 29610

Dear Senator Fair:

We understand from your letter that for the past thirty years Greenville County Council appointed commissioners to the Greenville Technical College Board of Commissioners. However, you “have been told to expect a Resolution from the Tech Board asking Greenville County Council and the Greenville County Legislative Delegation to cooperate in shifting the appointive responsibility from County Council to the Delegation.” Thus, you request an opinion of this Office “stating the statutory foundation for the Greenville Council’s authority to appoint the Greenville Technical College Board of Commissioners and/or the statutory authority for a change of appointment responsibility from the Greenville County Council to the Greenville Legislative Delegation.”

Law/Analysis

The Legislature created the Greenville County Commission for Technical Education (the “Commission”) by act 743 of 1962. 1962 S.C. Acts 1734. This act describes the Commission as “an administrative agency of Greenville County.” *Id.* According to this act, “All appointments to office of the Commission shall be made by the Governor, upon recommendation of a majority of the legislative delegation, including the Senator, from Greenville County.” *Id.* In 1967, the Legislature created the Greenville County Council (“County Council”) as the governing body for Greenville County. 1967 S.C. Acts 1084. As part of this legislation, the Legislature gave County Council certain specified powers. Among the powers listed, the County Council is “[t]o supervise and regulate the various departments of the county . . .” *Id.* In conjunction with this authority, the act provides that “Except as above provided, the Council shall elect, for such terms as it may set, and shall perform all functions related to the recommendation or appointment of boards or commissions as were formerly vested in the Greenville County Legislative Delegation . . .” *Id.* Because the members of the Commission, which is an agency of the Greenville County, were formerly recommended by the Delegation, we surmise that the Legislature transferred such recommendation authority to County Council in 1967. Thus, as of the effective date of the 1967 legislation, the

authority to make recommendations to the Governor for the appointment of members of the Commission appears to rest with County Council.

However, the passage of legislation pertaining to the Commission in 1968 creates some confusion as to whether the Legislature actually transferred recommendation authority with respect to the Commission from the Delegation to County Council. Act 1141 of 1968 generally amends the portion of the Commission's original enabling legislation pertaining to membership on the Commission. This provision, which adds two ex officio members to the Commission, states as follows:

There is hereby created, as an administrative agency of Greenville County a commission, to be known as the 'Greenville County Commission for Technical Education' (hereinafter referred to as the 'Commission'), which shall consist of nine members as follows: seven qualified registered electors of Greenville County who shall be appointed by the Governor, upon the recommendation of a majority of the legislative delegation from Greenville County, and the Chairman of the Board of Trustees and the Superintendent of Education of the School District of Greenville County who shall serve ex officio

1968 S.C. Acts 2646. This act makes no mention of the 1967 act, but calls for the Delegation to make recommendations for membership on the Commission. Thus, from this provision, we find it questionable as to the Legislature intended to transfer recommendation authority from the Delegation to County Council in 1967.

Regardless of the Legislature's intent with regard to the 1967 act, in reading 1968 act, we are of the opinion that if the Legislature intended to transfer recommendation authority from the Delegation to County Council in 1967, the 1968 act effectively transfers this authority back to the Delegation. Preceding the amended provision, the 1968 act states: "Section 2 of Act No. 743 of 1962 is amended so as to modify the membership of the Greenville County Commission for Technical Education by striking the section in its entirety and inserting in lieu thereof the following" *Id.* Because this provision calls for the Delegation to recommend members to be appointed to the Commission, it conflicts with the 1967 legislation transferring such authority to County Council. "The law clearly provides that if two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy." *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Accordingly, we are of the opinion that the 1968 legislation controls. Therefore, as of the effective date of the 1968 act, the Delegation held authority to make recommendations to the Governor on appointments to the Commission.

We note that in 1975, as part of the Home Rule amendments, the Legislature passed section 4-9-170 of the South Carolina Code (1986). This provision, contained among the general provisions pertaining to counties, 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.

S.C. Code Ann. § 4-9-170.

In several opinions of this Office, we addressed whether this provision transferred appointment authority for various technical college commissions from county legislative delegations to their respective county councils. Ops. S.C. Atty. Gen., July 29, 1980; January 28, 1980; January 4, 1980; December 31, 1979. In our August 9, 1979 opinion, we explained that according to Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975), “education is not a county function and that, consequently, the General Assembly is free to continue to enact local legislation regarding school matters.” Op. S.C. Atty. Gen., August 9, 1979. Thus, we concluded that “perhaps, county councils were not intended to exercise any powers with respect to education in its broadest sense. If the Legislature in fact intended this result, then the Council will not be empowered to change the method of appointing the Commission members on January 1, 1980.” Id. Accordingly, we determined section 4-9-170 did not alter the method of appointing members to the Williamsburg Technical, Vocational and Adult Education Center Commission. Id.

In our December 31, 1979 opinion, citing Moye, we again explained that public education is the duty of the Legislature, not the counties. Op. S.C. Atty. Gen., December 31, 1979. We concluded that public institutions of learning include technical colleges and therefore, technical colleges are a responsibility of the Legislature. Id. We supported this determination by the fact that technical colleges fall under the oversight of the State Board for Technical and Comprehensive Education, a state agency. Id. Thus, we determined that counties do not derive power from the Home Rule legislation in regard to technical colleges. Id.

Section 4-9-170 states that, beginning January 1, 1980, councils “. . . 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;” This authority does not appear to be sufficient to give counties the power to provide for the appointment of the members of technical college commissions. That duty should continue to rest with the legislature under Article XI § 3.

Id. (footnote omitted). Based upon the analysis in our prior opinions, we continue to opine that section 4-9-170 does not transfer recommendation authority for technical college commissions from county delegations to their respective county councils. Id.

In the case of the Commission, we find further support for this conclusion in yet another amendment to its enabling legislation. In 1992, the Legislature again amended the Commission’s membership provision by adding another member to the Commission. 1992 S.C. Acts (No. 599). Like the 1968 amendment, the 1992 act replaces the entire membership provision with the following:

There is created, as an administrative agency of Greenville County, the Greenville County Commission for Technical Education (commission), which consists of ten members as follows: seven qualified registered electors of Greenville County appointed by the Governor, upon the recommendation of a majority of the legislative delegation from Greenville County; and the Chairman of the Board of Trustees of the School District of Greenville County, the Superintendent of Education of the School District of Greenville County, and an executive officer of the Greenville Higher Education Center Advisory Council who serve ex officio. Of those first appointed, two shall have a term of one year, two shall have a term of two years, and three shall have a term of three years. Upon the expiration of the terms of office of those first appointed, successors are appointed for terms of three years in the same manner as those originally appointed. If a vacancy arises, a successor must be appointed by the Governor for the balance of the unexpired term in the same manner as the original appointments were made. The members of the commission hold office until their successors are appointed and qualify. All terms of office terminate on the appropriate anniversary of the effective date of this act, notwithstanding that a delay in making appointments shall lessen the duration of the terms of office. As soon as the initial appointments are made, the commission shall organize by electing one of its members as chairman, another as vice-chairman, and a third as secretary. A transcript of the record of the initial organization must

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be filed with the clerk of court of Greenville County in order to reflect the initial membership of the commission and those who become its officers.

Id. (emphasis added). Therefore, the 1992 act provides further clarification of both the Legislature's intent for the Delegation to maintain the authority to make recommendations to the Commission and its intent that section 4-9-170 not transfer appointment authority to the County Council.

Conclusion

Based on our analysis above, we are of the opinion that the Delegation currently holds authority to make recommendations to the Governor for appointments to the Commission.

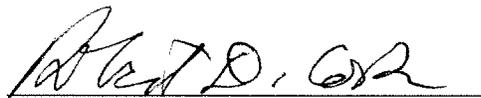
Very truly yours,

Henry McMaster
Attorney General



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