



ALAN WILSON  
ATTORNEY GENERAL

July 22, 2011

Thomas J. Smith, Executive Director  
South Carolina Commission for Minority Affairs  
6904 North Main Street, Suite 107  
Columbia, SC 29203

Dear Mr. Smith:

You have requested an opinion concerning the duties of the Native American Indian Advisory Committee (the "Committee") and its membership requirements pursuant to regulations promulgated by the State Commission for Minority Affairs (the "Commission"). The following information is provided with your request:

Section R. 139-107 and Section R. 139-200 specifically outline the [Committee's] requirements, membership and duties. The Commission has been asked what are the duties and the role of the [Committee] in regards to the Native American Affairs Initiative, its staff and the agency. [Committee] members presume that they will decide what projects, programs, and work the staff does on behalf of the Native American people of the State, while the Commission understands the role of the [Committee] is to offer advice, guidance and connection to the communities they represent.

Based on this background information, you ask, on behalf of the Commission, to define "a 'member' of the [Committee] and the duties and responsibilities of said 'members.'"

You provide additional information to this office:

Section R. 139-107 (D) of the regulations states, "The Chair of the [Committee] shall be the Executive Director of the [Commission] or a designee appointed by the Executive Director." Section R. 139-203 (D) of the regulations states, "the chair of all Advisory Committees shall be the Executive Director of the [Commission] or a designee appointed by the Executive Director." The [Committee] presumes that the Executive Director can appoint anyone to serve as "Chair" of the committee as an indefinite "designee." The Commission understands the use of a 'designee' for the "chair" in the Executive Director's absence to mean program staff serving in that capacity, given that the program staff coordinates committee meetings.

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Based on this information, the Commission requests “clarification on who can serve as a ‘designee’ for the ‘Chair’ of the Advisory Committees [and] [i]f the ‘designee’ is not a member of the Commission staff, then what would be the length of service, duties and responsibilities of said ‘designee’?”

S.C. Code Ann. §§1-31-10 *et seq.* govern the Commission. Among the Commission’s powers and duties, the Legislature afforded it the power to “establish advisory committees representative of minority groups, as the commission considers appropriate to advise the commission.” §1-31-40 (A) (7). In addition, the Legislature gave the Commission the authority to “promulgate regulations as may be necessary to carry out the provisions of this article including, but not limited to, regulations regarding State Recognition of Native American Indian entities in the State of South Carolina.” §1-31-40 (A) (10).

Based on its authority, the Commission’s regulations state, pursuant to S.C. Reg. 139-202, that the duties of Advisory Committees are to:

- A. Advise the Commission for Minority Affairs regarding socio-economic issues relevant to African Americans, Hispanics/Latinos, Asians and other ethnic minority groups in South Carolina.
- B. Identify the needs and concerns of the various ethnic minorities and bring such needs and concerns to the attention of the Commission for Minority Affairs.
- C. Make recommendations to the Commission for Minority Affairs to address the needs and concerns of ethnic minority groups.

Reg. 139-203 provides for “Membership, Terms, Size and Administration” of the Commission’s Advisory Committees as follows:

- A. The recommendation and selection of persons to serve on the Advisory Committees shall be made by the Executive Director of the Commission, with the review and approval of the Board of the Commission for Minority Affairs.
- B. The committee members shall serve for two year terms and may be recommended for reappointment by the Executive Director of the Commission, with the review and approval of the Board of the Commission for Minority Affairs.
- C. Advisory Committees shall not exceed twenty persons.
- D. The chair of all Advisory Committees shall be the Executive Director of the Commission for Minority Affairs or a designee appointed by the Executive Director.

E. Advisory Committees serve at the pleasure of the Board of the Commission for Minority Affairs.

F. Advisory Committee members, including Native Americans, serve without compensation or per diem. . . .

Relevant to your inquiry, Reg. 139-106 sets forth the role and responsibilities of the Committee as follows:

[i]t shall be the purpose of the Native American Indian Advisory Committee to preserve the true aboriginal culture of the Americas in the State of South Carolina and to advance the Native American Indian culture by:

- (A) Advising the Commission regarding Native American Indian Affairs.
- (B) Identifying the needs and concerns of the Native American Indian people of South Carolina by bringing such needs and concerns to the attention of the Commission.
- (C) Making recommendations to the Commission to address the needs and concerns of Native American Indian people.
- (D) Inviting individuals recognized as specialists in Native American Indian Affairs and representatives of the state and federal agencies to present information to members of the Advisory Committee.

Further, Reg. 139-107 sets forth membership requirements for the Committee, stating that:

[e]ntities who want to participate on the Native American Indian Advisory Committee must meet and comply with the following minimum requirements:

- (A) The entity must have obtained State Recognition designation as either:
  - (1) A Tribe.
  - (2) A Group.
- (B) Upon receiving State Recognition, the tribal council, and/or governmental authority of the "Tribe" or "Group" must provide in writing to the Commission, the name, address, and telephone number of the voting representative to serve on the Advisory Committee. Designees shall continue to serve until such time as the Executive Director of the

Commission is notified in writing of a change by the appointing tribal council and/or governmental authority.

(C) Additionally, representatives from the following organizations shall serve as non-voting advisors to members of the Native American Indian Advisory Committee:

- (1) Office of the Governor.
- (2) Office of the State Archeologist.
- (3) Federally Recognized Tribes.
- (4) Commission for Minority Affairs.
- (5) Representatives from South Carolina state agencies having a vested interest in Native American affairs.

(D) The Chair of the Native American Indian Advisory Committee shall be the Executive Director of the Commission for Minority Affairs or a designee appointed by the Executive Director.

(E) The Native American Indian Advisory Committee serves at the pleasure of the Board of the Commission for Minority Affairs.

(F) The Native American Indian Advisory Committee shall meet at least twice a year or at the call of the chair.

(G) The Native American Indian Advisory Committee may establish subcommittees to carry out its purpose.

We note an opinion of this office dated March 24, 1989, in which we stated:

. . . generally the same rules of construction and interpretation govern the construction and interpretation of rules and regulations of administrative agencies as apply to statutes in the same field. Thus, there have been applied to administrative regulations the rules applicable to statutes in regard to construction to uphold the validity of the regulation; construction in accordance with the legislative intent and purpose; construction to harmonize two or more provisions on the same subject, giving effect, if possible to all the provisions of the regulations; general provisions as limited in their application by specific ones on the same subject; the natural and plain meaning of words; penal character; liberal construction of remedial provisions; the strict construction of

exemptions or provisions defining conduct for which criminal or penal sanctions are imposed; retrospective operation, and repeal by implication.

The court in the interpretation of administrative rules and regulations also applies the doctrine applicable in the interpretation of statutes that great weight will be given to an administrative construction, especially when long continued and uniform, and the limitations of that doctrine are also applied in the construction of rules and regulations. An administrative construction of the agency's own regulations is controlling in determining their meaning unless plainly erroneous or inconsistent with the regulations. . . .

See also Op. S.C. Atty. Gen., March 17, 2006 [emphasizing that when interpreting regulations, the basic rule of statutory construction is that regulations relating to the same subject matter should be harmonized, if reasonably possible].

Consistent with the authority above, it is the opinion of this office the Commission's Advisory Committees are advisory boards for the Commission on issues concerning ethnic minorities in South Carolina, including Native American affairs as it pertains to the Committee. There is clearly no legislative or other grant of power or duties by the Commission to the Committee. The sole function of the Committee is thus to make non-binding recommendations to advise the Commission on matters delegated to the Commission by the Legislature. See Ops. S.C. Atty. Gen., December 3, 2007; September 10, 1993; January 16, 1969.

Additionally, the selection of members to serve on the Committee is made by the Commission's Executive Director, subject to the review and approval of the Commission. The Committee may not exceed twenty members, whose terms are limited to two years, although they may be recommended for reappointment by the Executive Director of the Commission, again subject to the review and approval of the Commission. Entities seeking membership on the Committee must represent a State-recognized "tribe" or "group" as defined by Reg. 139-102 D & E, and as determined by the State Recognition Committee.<sup>1</sup> Representatives on the Committee chosen by the tribal council and/or governmental authority remain on the Committee until the appointing tribal council and/or governmental authority notifies the Executive Director of the Commission, who is also the Chair of the Committee, of a change. Other representatives on the Committee representing the Governor's Office, the Office of the State Archeologist, Federally Recognized Tribes, the Commission, and representatives from South Carolina state agencies with a vested interest in Native American affairs act solely as advisors to members of the Committee and may not vote.

Regarding the second question presented in your request, it is clear that Reg. 139-107 (D) authorizes the appointment of a "designee" Chair for the Committee by the Executive Director of the Commission. There are no limitations regarding the appointment of a "designee" or delegation of authority to a "designee" Chair of the Committee. Of course, the "designee" would serve at the will of the

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<sup>1</sup>Reg. 139-105 sets forth criteria for State Recognition by the State Recognition Committee acting pursuant to Regs. 139-108, - 109.

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Executive Director. We have been unable to locate any prior opinions or court decisions on this precise question, however. We therefore advise the Executive Director to exercise careful discretion to choose a "designee" best able to fulfill the duties and responsibilities of the Committee to advise the Commission with respect to Native American affairs.

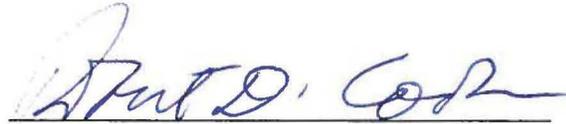
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General