



ALAN WILSON
ATTORNEY GENERAL

October 23, 2012

Kenneth M. Moffitt, Esquire
Chief Counsel
Joint Transportation Review Committee
P.O. Box 142
Columbia, SC 29202

Dear Mr. Moffitt:

We received your letter on behalf of the Joint Transportation Review Committee ("JTRC") regarding the election of commissioners of the South Carolina Department of Transportation Commission (the "DOT Commission"). By way of background, you state the JTRC has received notices of intent to run for election to represent the Second Congressional District on the DOT Commission from a resident of Richland County and a resident of Lexington County. You indicate that Richland County presently has a resident Commissioner, whose term will not expire until February 15, 2014. In addition, the Governor's at-large appointee to the DOT Commission resides in Lexington County. You ask us (1) whether a resident of Richland County is eligible to serve on the DOT Commission simultaneously with the resident Richland County Commissioner and (2) whether a resident of Lexington County is eligible to serve on the DOT Commission simultaneously with the at-large Commissioner who is also a resident of Lexington County.

Title 57 of the South Carolina Code establishes the DOT Commission. Pursuant to §57-1-310, transportation districts are set up in accord with State congressional districts. The DOT Commission 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, upon the advice and consent of the Senate, from the State at large. Id. If a county is divided among two or more DOT districts, for purposes of electing a commission member, the county is deemed to be considered in the district which contains the largest number of residents from that county. See §57-1-320(A). The procedure for selecting commissioners from each congressional district is found in §57-1-325. Legislators residing in the congressional district shall meet upon written call of a majority of the members of the delegation of each district for the purpose of electing a commissioner to represent the district. Id. A majority present, either in person or by written proxy, of the delegation from a given congressional district constitute a quorum for the purpose of electing a district commissioner. Id. No person may be elected commissioner who fails to receive a majority vote of the members of the delegation. Id. The delegation must be organized by the election of a chairman and a secretary, and the delegations of each congressional district shall adopt rules as they consider proper to govern the election. Id. Under §57-1-330, commissioners must be elected by the legislative delegation of each congressional district. For the purposes of electing a commission member, the legislators shall vote only in the congressional district in which they reside. Id.

In our attempt to answer your question, we remain cognizant of the rules of statutory interpretation. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364, 366 (1994).

Significantly, §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].

In addition, §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].

We refer to the opinion of this Office dated June 10, 2009 (2009 WL 1968613), where we addressed whether a person residing in the same county as the sitting at-large member of the DOT Commission is eligible for election as a district commissioner. Therein, we stated that:

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 the same county serve as a commission member simultaneously except as provided hereinafter.” 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. [Emphasis in original].

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).

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We thus concluded from the wording of §§57-1-320(B) and -330(B) that it was the intent of the General Assembly that two persons from the same county not serve as commissioners on the DOT Commission. We determined that although §57-1-320(B) states that such provision would apply "except as provided hereinafter," there are no further provisions setting forth an exception to the prohibition. Absent an exception, we advised that no person who resides in the same county as the sitting at-large member of the DOT Commission would be eligible for election as a district commissioner.¹

It is again the opinion of this Office that no person residing in the same county as the at-large DOT Commissioner would be eligible for election as a commissioner until such Commissioner is replaced by the Governor with a commissioner from another county. Further, we advise that no person residing in the same county as a sitting resident DOT Commissioner would be eligible for election as a commissioner until the term of that commissioner expires. It is apparent to us that it was intent of the legislature that two persons from the same county not serve as a DOT Commission member. There are no exceptions to this prohibition.

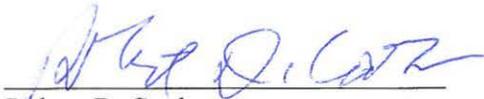
We also observe that since our 2009 opinion was rendered, no legislative changes have been forthcoming. It is well-recognized the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. See Ops. S.C. Atty. Gen., December 17, 2004 (2004 WL 3058233) [citing Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43, 47 (1977)]; June 8, 1999 (1999 WL 540713) [same]. Indeed, we note the Legislature has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office. No such amendment has been forthcoming in this instance, however. Accordingly, the reasoning in our 2009 opinion concluding that a person residing in the same county as a sitting commissioner or an at-large commissioner would not be eligible for election as a commissioner on the DOT Commission, represents a correct statement of the law and remains the opinion of this Office.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹We further advised that, because of the ambiguity of §57-1-320, consideration could be given to seeking a declaratory judgment to resolve the issue with finality.