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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 15, 2000

The Honorable Herb Kirsh
Member, House of Representatives
Box 31
Clover, South Carolina 29710

RE: Informal Opinion

Dear Representative Kirsh,

Thank you for your letter of May 3, 2000, requesting an opinion of this Office. You ask about the legal status of the current legislative delegation appointees to the Pee Dee Regional Transportation Authority.

You present two questions:

- 1.) Shall a transportation authority formed under Chapter 25 of Title 58 of the South Carolina Code of Laws (1976, as amended) prior to July 1, 1985 and choosing to operate in accordance with the terms and conditions of that law follow the terms and provisions of Section 58-25-40?
- 2.) Shall a transportation authority formed under Chapter 25 of Title 58 of the South Carolina Code of Laws (1976, as amended) prior to July 1, 1985 and choosing to operate in accordance with the terms and conditions of that law and receiving a grant of funds from the state general fund and/or the highway fund have three legislative delegation appointees to its board chosen by a method determined by a majority of the delegation members of the member counties involved in the authority acting jointly excepting the case where the method of appointment of the legislative delegation members is specified in the agreement establishing the authority?

We are also advised that although the Authority chose to operate in accordance with the terms and conditions of the law prior to July 1, 1985, the Authority specifically adopted in its by-laws S.C.

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Code Ann. § 58-25-40. Furthermore, we are advised that, consistent with S.C. Code Ann. § 58-25-40, the terms of the appointees on the governing board are only three years.

The law relating to regional transportation authorities was found in South Carolina Code of Laws Section 58-25-10 et seq., prior to the adoption of Act No. 169 of 1985. The current S. C. Code § 58-25-40 provides for the appointment, terms, and removal of appointees to the governing board of a transportation authority. The first two paragraphs address the composition of the core representatives. The third paragraph reads, in pertinent part:

As many as three additional members of the governing board of a transportation authority may be appointed by the legislative delegations of the member counties if approved in accordance with the procedures set forth in Section 58-25-30. *If the authority receives a grant of the state funds from the general fund or the highway fund, the delegation shall appoint three additional members.* Unless the agreement provides otherwise, the members of the governing board appointed by the delegation must be apportioned as determined by a majority of the delegation members, including the resident senator.... (emphasis added)

Also relevant to your inquiry is Section 4 of Act No. 169 of 1985, which states:

Any transportation authority formed under Chapter 25 of Title 58 of the 1976 Code prior to July 1, 1985, may continue to operate in accordance with the terms and conditions of that law. However, as the terms of appointees to the governing board expire, appointments and composition must be in accordance with the provisions of Section 58-25-40....

This provision "grandfathers" appointees under the old law, but specifically applies § 58-25-40 as new terms begin, even if otherwise the Authority continues to operate under the old law.

Your questions address whether the current § 58-25-40 applies to a board operating under the old law. Because the Pee Dee Regional Transportation Authority chose to operate under the pre-1985 amendments, it is generally governed by the provisions of the old law. However, the 1985 amendment made clear that with respect to the appointment and composition of the representatives on the governing board, the provisions of the new law would control as the terms of the pre-1985 representatives expired, regardless of whether the old law controlled as to other provisions. In other words, a board composed entirely of pre-1985 members whose terms had not yet expired may not be governed by § 58-25-40 at all. But once new terms are introduced, the appointment provisions of § 58-25-40 are implicated.

As of the year 2000, all pre-1985 terms of appointees to the governing board should have expired. Therefore, applying the plain and literal meaning of the statute, which must be done in the absence of ambiguity, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), this Office

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advises that the Authority must follow the provisions of § 58-25-40. Furthermore, this conclusion is in accordance with the Authority's own by-laws, which as we are told, have adopted § 58-25-40. Finally, § 58-25-40 requires the legislative delegation to appoint three additional members to the board if the Authority receives state funds. Although the exact method for the legislative delegation to choose the appointees is unclear, see Op. Atty. Gen. No. 90-9 (Jan. 17, 1990), the statute plainly states that the legislative delegation has the authority to appoint the members.

In sum, to answer your two questions, it is the opinion of this Office that the Pee Dee Regional Transportation Authority must follow the provisions of S.C. Code Ann. § 58-25-40. Because the Authority receives state funds, the legislative delegation must appoint three additional members to the governing board.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Zeb C. Williams, III
Deputy Attorney General