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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 1, 2000

The Honorable J. Roland Smith
Member, House of Representatives
183 Edgar Street
Warrenville, South Carolina 29851

RE: Informal Opinion

Dear Representative Smith:

Your opinion request has been forwarded to me for reply. You have informed this Office of the following:

The Clearwater Water and Sewer District is a very small district that consists of three commissioners elected by the people and appointed by the legislative delegation. When there is a vacancy during a term, one option is for the delegation to recommend someone to the Governor to serve until the term expires. Approximately, six months ago, we recommended and appointed Mr. Jimmy Rogers to fill the unexpired term of Mr. Mercer Hadden. Last Thursday, Mr. Rogers resigned due to health reasons.

It has come to my attention that a verbal war is apparently going on between the remaining commissioners. Correspondence with the Governor's office, phone calls to myself and Senator Moore have been received concerning the removal of Mr. Jerry Reece, who was elected as a write-in and confirmed by the delegation.

I am well-aware that we can make a recommendation to the Governor's office to fill an open position. We have asked, in writing, that someone in the Governor's office meet with the two remaining commissioners and explain to them the bi-laws, minutes, audits that should be taken and any other information necessary for them to accomplish their work. We feel that a number of these things have not been done in

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the last few years, such as, audits, public notification of meetings and all commissioners being notified to be present when a meeting is held.

...

I have personally talked to the remaining commissioners, and Mr. Reece has said that he would be happy to meet and try to appoint someone temporarily until a new commissioner is elected. Mr. Roden has not been agreeable to a meeting. Apparently, he has access to the office with the keys the clerk turned over to him. I talked with him on one occasion and thought I had convinced him to have a meeting and try to resolve the issues, go forward and serve the public. I pointed out to him that they are public servants and should be serving the people and not feuding and fussing among themselves. I thought it was resolved, but I have since found out that this is not the case. I even offered to allow the delegation office to do any correspondence to announce a meeting on their behalf.

You have asked whether the Governor possesses statutory authority to remove these individuals from office for failure to perform their duties.

Section 1-3-240 of the South Carolina Code of Laws provides, with certain exceptions, that "any officer of the county or State" who is guilty of malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity shall be subject to removal by the Governor upon any of the foregoing causes being made to appear to the satisfaction of the Governor. Before removing any such officer, however, the Governor shall inform him in writing of the specific charges brought against him and give him an opportunity on reasonable notice to be heard.

This Office has previously concluded that the removal provisions found in Section 1-3-240 addressing persistent neglect of duty do not apply to members of a special purpose district because such members are not State or county officers. Ops. Atty. Gen. dated March 11, 1974 and May 3, 1996. While Article VI, Section 9, provides a vehicle upon which the Legislature may provide for such removal, that section does not appear to be self-executing, and has not been implemented. Id. Accordingly, at the present time, the Governor does not possess statutory authority to remove members of the Clearwater Water and Sewer District for failure to perform their duties.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific

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questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch

Assistant Attorney General