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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 5, 2001

Mr. Beverly C. Snow, Jr.
Vice Chairman
South Carolina Coastal Zone Management Appellate Panel
1362 McMillan Avenue, Suite #400
Charleston, South Carolina 29405

Dear Mr. Snow:

Thank you for your letter of October 20, 2000 that was referred to me for response. In your correspondence, you ask for an opinion from this Office regarding the legality of a proposed change in structure and focus of the South Carolina Coastal Zone Management Appellate Panel (hereinafter, Appellate Panel or Panel).

As you relate in your letter, the General Assembly in enacting SC Code Ann. § 48-39-10 *et seq.* conferred upon the Appellate Panel two roles. The primary role of the Appellate Panel is set forth in § 48-39-150 (D) of the SC Code of Laws that states the following:

Any applicant having a permit denied or any person adversely affected by the granting of the permit has the right of direct appeal from the decision of the Administrative Law Judge to the Coastal Zone Management Appellate Panel. Any applicant having a permit denied may challenge the validity of any or all reasons given for denial.

The Appellate Panel has specific authority granted by the Legislature to hear appeals in this regard. Furthermore, the Appellate Panel, under the authority of SC Code Ann. § 48-39-40, "shall act as an advisory council to the Department of Health and Environmental Control (hereinafter DHEC)." It is this secondary authority granted to the Appellate Panel that you believe is in conflict with your appellate task.

What you have specifically asked this Office to comment upon is the legality of creating some sort of bifurcated panel that would allow some members of the Appellate Panel to form a committee to "conduct an informational forum on each controversial permit application." This committee would then "make a formal recommendation to the Department staff prior to the staff's

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decision on the application.” Another committee comprised of different members than the first would continue the appellate function of the Appellate Panel “regarding the application involved.”

First and foremost, it must be recognized that the Appellate Panel is a public body. See SC Code Ann. §30-4-20 (1976 as amended). As such, the Panel must operate according to certain general rules. One such rule concerns the manner in which a public body may dispose of its assigned duties. On this topic, this Office has previously observed that “[t]he general law...is that authority vested in a [public body] may be exercised by a majority of the members if all have had notice and opportunity to act and a quorum, or the number fixed by statute, are present. *The presence and vote of a quorum is necessary, and the action of less than a quorum of a public body is void.* 1 Am.Jur.2d Administrative Law Sec. 196. *Unless otherwise provided by statute, the authority of [a public body] may not be exercised by a single member of such body, or less than a majority.* 73 C.J.S. Public Administrative Law and Procedure Sec. 20.” Op. Atty. Gen., No. 89-45 (April 13, 1989); See also, Op. Atty. Gen. Dated September 6, 1996 (1996 WL 599391 (S.C.A.G.)) (*Emphasis Added*).

The plan of the Appellate Panel is to “designate several of its fourteen members” to hold the forum and issue the formal recommendation mentioned above regarding permit applications. This would be done to satisfy the Panel’s official duty to advise DHEC. The members not so designated would be left to satisfy the Panel’s duty to hear any appeal related to a contested application. Such an arrangement, however, could not possibly allow the Appellate Panel to provide a majority of its members to perform both duties. Nowhere in SC Code §§48-39-10 *et seq* is it provided that the Panel may exercise its authority with less than a simple majority or that a quorum may consist of anything less than a majority. Accordingly, the Appellate Panel’s proposed “operational process and structure” would appear to violate the general tenets of administrative law.

Furthermore, such a plan may also run against the intent of the General Assembly in enacting these statutes in their current form.¹ The General Assembly created the Panel by providing that representatives from specific counties and districts shall be elected members. The “Panel” is to hear appeals from those persons adversely affected by permit decisions. While having a bifurcated panel would not necessarily create a due process violation of Article I, § 22 of the South Carolina Constitution, See Baldwin v. South Carolina Department of Public Safety, 376 S.E.2d 259 (1989), and Babcock Center v. Office of Audits, South Carolina Department of Social Services, 334 S.E.2d 112 (1985), the arbitrary exclusion of members representing specific counties or districts from their appellate function may not satisfy the General Assembly’s intent in providing for the cross-sectional composition of the Panel. Instead, the general provisions of §48-39-40 and the specific duties outlined in §48-39-150 must be read together and reconciled such that each can be given its intended effect. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984). Accordingly, the

¹ The primary goal of statutory interpretation is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute’s words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute’s operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

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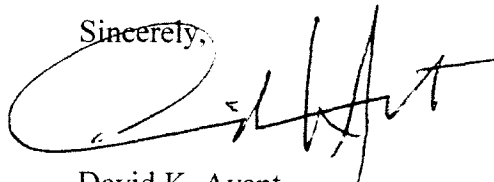
Panel's actions as an "advisory council" under §48-39-40 could not be exercised in such a way as to interfere with its specific duty to hear appeals.

Lastly, the General Assembly has given DHEC broad powers and duties pursuant to S.C. Code Ann. §§48-39-50 to administer the law and promulgate rules and regulations related to South Carolina's coastal tidelands and wetlands, including the power to approve or deny applications for permits.² Since the General Assembly did not specifically define the Panel's role in advising DHEC, it would appear that they intended DHEC to determine how the Panel should properly accomplish its advisory task. Cf. Young v. South Carolina Dept. of Highways and Public Transp., 287 S.C. 108, 336 S.E.2d 879 (S.C. App. 1985). The construction given to a statute by the agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons. Laurens Co. School Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992); Jasper Co. Tax Assessor v. Westvaco, 305 S.C. 346, 409 S.E.2d 333 (1991). If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court could have adopted in the first instance. Op. Atty. Gen. dated March 12, 1997. As a matter of policy, this Office typically defers to the administrative interpretation by the agency charged with enforcement of the statute in question. See Op. Atty. Gen. October 20, 1997. Therefore, any change in the manner in which applications for permits are considered should best be handled by and through DHEC.

Based on the aforementioned tenets of administrative law and of statutory interpretation, it is my opinion that a change as described in the "operational process and structure" for considering applications for permits pursuant to S.C. Code Ann. §48-39-10 *et seq.* would require additional legislative action. Even if such an interpretation is incorrect, as the law currently exists, DHEC would be the appropriate agency to approve and implement any change in the process.

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 question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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² Under 1993 Act No. 181, §1235, eff. July 1, 1994, this chapter of the Code was amended and DHEC was substituted for the South Carolina Coastal Council, the forerunner of the Appellate Panel. Senate Bill S 978 (1999-2000) was proposed to reconstitute the Council and restore its authority to issue permits under §48-39-40, but the Bill was not passed by the General Assembly.