

## The State of South Carolina



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June 27, 1994

The Honorable Doug Smith  
Member, House of Representatives  
529 Palmetto Street  
Spartanburg, South Carolina 29302

Dear Representative Smith:

By your letter of June 13, 1994, you have sought an opinion as to implementing an election, as properly requested by petition, for the commissioners of the Cherokee Springs Fire District. You wish to know whether S.C. Code Ann. §6-11-70 (1993 Cum. Supp.) applies to the process and also whether terms of the appointed members may be shortened.

Cherokee Springs Fire District was created pursuant to Act No. 318, 1965 Acts and Joint Resolutions. The governing body is to consist of seven members appointed by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation. Provision for election of the members is made in section 4 of that act:

If at least twenty percent of the qualified electors residing in the district petition the commissioners of election by the first of September of any general election year, the commissioners shall call an election to be held at the following general election for the purpose of electing a member to the board to succeed the members whose terms will expire during such year, for a six-year term. Thereafter, members shall be elected in each succeeding general election for terms of six years.

You have advised that recently the citizens of the district petitioned the commissioners of election, calling for the election of fire district commissioners. The petition has been certified by the Spartanburg County Election Commission, which body was prepared to call the election until it was determined

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that all of the district commissioners' terms expired in odd or off years, as opposed to the even years in which general elections are held.

Another consideration is presented by S.C. Code Ann. §6-11-70 (1993 Cum. Supp.), which provides in subsection (A):

When a special purpose district elects its board members, the board members must be elected in the November general election held in an even-numbered year. To implement the provisions of this section, the governing body of a county shall by ordinance extend terms, for necessary periods, of persons to be elected to permit the persons to be elected in accordance with the provisions of this section, but no elected term may be shortened for that purpose.

As you point out, there seems some ambiguity in that according to §6-11-70, the only possible way in which the election commission can call an election is if the governing body of the county actually extends the terms of the fire district commissioners until the "next" general election (i.e., November 1996). You have suggested that the best solution would be to shorten the terms and have the election this year. Since the Cherokee Springs Fire District Commissioners are not elected, you have asked whether the language of §6-11-70, dealing with shortening of elected terms, would apply in this instance.

The concept of "election" generally connotes selection of one to a public office by the qualified voters of a community, while "appointment" is usually selection of a public officer by one empowered to make such appointment. See 14 Words and Phrases, "Elect; Elected; Election," p. 224. Because the present fire district commissioners are appointed rather than elected, the sentence in question may not apply to this situation.

The question then to be addressed is whether the terms of any commissioners may be shortened and, if so, by whom. Prior opinions of this Office have recognized the authority of the General Assembly to change the term of an office that is not governed by constitutional provisions. See Ops. Atty. Gen. dated October 12, 1981; June 15, 1981; October 3, 1973. In 67 C.J.S. Officers §70 it is stated that

[t]he sovereign power creating an office may change its tenure in the absence of constitutional restriction... Accordingly, the legislature may change the term of an office during the term of an office during the term of an incumbent... .

In Ward v. Waters, 184 S.C. 353, 192 S.E. 410 (1937), the Supreme Court, quoting with approval from State v. Hough, 103 S.C. 87, 87 S.E. 437 (1915), held that the term of office of members of the county governing body could be extended by the General Assembly inasmuch as

[t]hose holding offices created by the Legislature hold them subject to the legislative will. The power that creates an office can impose such limitations and conditions upon the manner of filling it, and the tenure and the exercise of the duties of the office, and may modify or abolish any of these, or the office itself, as its wisdom may dictate, when no provision of the Constitution is contravened in doing so.

Id., 184 S.C. at 360-61. In Walpole v. Wall, 153 S.C. 106, 150 S.E. 760 (1929), the court reviewed a case where a suit had been brought contesting whether members of a school board had been legislated out of office by newly enacted legislation. The court stated that

[s]chool trustees are legislative, not constitutional, officers whose terms may be ended or extended at the will of the Legislature.

Id., 153 S.C. at 117.

#### CONCLUSION

Applying the foregoing, it may be concluded that commissioners of the Cherokee Springs Fire Department occupy offices that were created by the General Assembly. There is no applicable impediment to the legislature's shortening or lengthening terms. Thus, terms of the commissioners could be shortened (or extended) at the will of the General Assembly.<sup>1</sup> It is doubtful that such shortening of terms could be accomplished merely by action of Spartanburg County Council, as that entity's authority has been granted only to lengthen terms by §6-11-70. (See §4-9-80 as to limitations imposed on county councils relative to special purpose or public service districts.)

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<sup>1</sup>It would be preferable to accomplish such shortening by general law rather than by one applicable to only Spartanburg County (i.e., to Cherokee Springs Fire District). See Art. VIII, §7; Art. III, §34, S.C. Const.

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I trust that the foregoing has adequately responded to your inquiry. If you need clarification or additional assistance, please advise.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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