



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 20, 1995

The Honorable Dick F. Elliott
Senator, District No. 28
Post Office Box 3200
North Myrtle Beach, South Carolina 29582

RE: Informal Opinion

Dear Senator Elliott:

By your letter of September 5, 1995, to Attorney General Condon, you have sought an opinion as to two prospective appointments to be made by the Horry County Legislative Delegation, in concert with other county delegations. Each of your questions will be addressed separately, as follows.

Department of Transportation

You advised that when the South Carolina Department of Highways and Public Transportation was restructured as the Department of Transportation, commission appointments were no longer made from the sixteen judicial circuits as they had been, but from the six congressional districts. Under the former system, each judicial circuit was comprised of several counties, with representation rotating from county to county within the circuit every four years. With restructuring, the size of the commission shrunk to seven members, one from each of the State's congressional districts and the chairman appointed from the State at large. You advised that rotating from county to county within the congressional districts was part of the model that the General Assembly looked at as being fair to all counties throughout the State.

Your particular quandary is related to the initial legislation: in order to stagger the terms, three members would be elected every two years, with the chairman appointed every four years or coterminous with the Governor's term. The concept of rotating was

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envisioned. Therefore, in the First, Third, and Fifth Congressional Districts, the members were initially appointed to the new commission for two year terms to start the staggering rotation. The question has been raised as to whether or not those original appointees for the two year terms, whose terms will be expiring in the Spring of 1996, may be allowed to be reappointed for an additional four year term. In the alternative, you asked whether the appointments must come from one of the other counties on a rotating basis.

Composition of the restructured Department of Transportation governing body is provided for by S.C. Code Ann. §57-1-310 (1994 Cum. Supp.), which provides in relevant part:

The congressional districts of this State are constituted and created Department of Transportation districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The Commission of the Department of Transportation 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. ...

Certain limitations on representation of the various counties are expressed in §57-1-320(B): "No 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."

Selection and terms of commissioners is governed by §57-1-330, which provides in relevant part:

(A) Beginning February 15, 1994, commissioners must be elected by the legislative delegation of each congressional district. ... All commission members must serve for a term of office of four years which expires on February fifteenth of the appropriate year. ...

(B) The terms of the initial members of the commission appointed from congressional districts are as follows:

(1) commission members appointed to represent odd-numbered congressional districts--two years; and

(2) commission members appointed to represent even-numbered congressional districts--four years.

The cardinal rule of statutory interpretation is to ascertain and effectuate legislative intent wherever possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). An unambiguous statute will be given effect according to the clear meaning of its language. Citizens and Southern Systems, Inc. v. S.C. Tax Commission, 280 S.C. 138, 311 S.E.2d 717 (1984); Helfrich v. Brasington Sand & Gravel Co., 268 S.C. 236, 233 S.E.2d 291 (1977). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Statutes in apparent conflict must be read together and reconciled if possible so as to give meaning to each and to avoid an absurd result. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984).

The phrase "term of office," as used in §57-1-330, connotes a fixed and definite period of time. See 63A Am.Jur.2d Public Officers and Employees §66. Accord State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948); State ex rel. Rushford v. Meador, 267 S.E.2d 169 (W.Va. 1980). In §57-1-330, the General Assembly distinguishes between the terms of office of the members appointed to the initial commission and those members appointed after the initial commission. The term of office for the members of the initial commission are specifically designated as two years for members from the first, third, and fifth congressional districts, and for four years for the members from the second, fourth, and sixth congressional districts; the member at large is to serve at the pleasure of the Governor, potentially a four-year term if that individual should serve coterminously with the Governor.

A further consideration is that §57-1-320(B) prohibits a county within a transportation (congressional) district from having a resident commission member for more than one consecutive term. The issue thus becomes whether or not the two year term of office of a member appointed to the commission from the First, Third, or Fifth district would be a "term" within the proscription of §57-1-320(B). It would appear that the legislature contemplated that a two year term for certain of the initial appointees be a full or complete term. Similarly, after the initial commission is appointed, the terms of office for subsequent commission members would be full or complete four year terms. The legislature has not made any provision or exception for those serving a two year term to be reappointed in a consecutive manner or for the counties of which those members are residents to have representation for another, consecutive, four year term after the expiration of the members' initial two year terms.

Considering all of the foregoing, it appears that the obvious legislative intent was to place a limitation on the number of terms that a commission member may serve on the commission, namely, one. This legislative intent would be effectuated by limiting the designated appointive members of the initial commission to serve either their two year

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term or four year term, as may be appropriate depending on which congressional district they represent.

For these reasons, I am of the opinion that members of the initial commission of the Department of Transportation appointed to represent the First, Third, and Fifth congressional districts who were elected by their respective legislative delegations to serve for terms of office of two years would not be eligible to serve an additional, consecutive, four year term of office. Section 57-1-320(B) contemplates that the next appointment would be made from another county within the congressional district, on a rotating basis. Certainly, at some time in the future, those members serving the initial two year terms would be eligible to serve another non-consecutive four year term on the commission when the rotation contemplated by §57-1-320(B) returns to their respective counties.

State Board of Education

Your second question concerns a future appointment to be made to the State Board of Education by the legislative delegations comprising the Fifteenth Judicial Circuit. You advised that the Horry and Georgetown County Legislative Delegations are pondering the question of an applicant who resides in Georgetown County who is presently the representative of the Fifteenth Circuit on the State Board of Education. You further advised that the Horry County Delegation has expressed some interest in appointing for a second four year term this member from Georgetown County. While no vote has been taken or even formally considered, you have sought clarification from this Office in the event that this outstanding individual should have the consensus of the Horry and Georgetown Delegations. You expressed your understanding that the legislative scheme for the State Board of Education, like that of the Department of Transportation, was to provide for the rotation of various members from various counties across the State to serve on this Board.

The composition, appointment, and organization of the State Board of Education are addressed in S.C. Code Ann. §59-5-10 (1976). The fourth and sixth paragraphs of §59-5-10 provide as follows:

Representation of a given judicial circuit on the State Board of Education shall be rotated among the counties of the circuit, except by unanimous consent of all members of the county legislative delegations from the circuit. No member shall succeed himself in office except by unanimous consent of the members of the county legislative delegations from the circuit. Members of the legislative delegation of any county entitled to a

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member of the Board shall nominate persons for the office, one of whom shall be elected to the Board.

....

At the initial meeting of the legislative delegations representing the counties of each circuit, it shall be determined by lot the sequence in which each county shall be entitled to nominate persons for the office.

Applying the rules of statutory construction discussed previously to §59-5-10, I am of the opinion that it is possible for a member of the State Board of Education to be elected to a second consecutive term. For that event to occur, the members of the legislative delegations comprising the Fifteenth Judicial Circuit would be required to consent unanimously that the representation not rotate to the other county (Horry, in this instance, since representation presently comes from Georgetown). Further, unanimous consent of all members of the delegations would be required for the individual to succeed himself.¹

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiries and that you will advise should clarification or additional assistance be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

¹Your actual question was whether the appointment scheme could be altered by the action of a majority of the members of the delegations comprising a given judicial circuit. The plain language contemplates action by unanimous consent rather than by a majority of the delegation members.