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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

September 30, 1998

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

Dear Representative Smith:

Your opinion request has been forwarded to me for reply. You have informed this Office that the position of Executive Director of the Aiken County Registration and Election Commission will become vacant upon the December retirement of the present executive director. Notice of the position opening was posted for receipt of applications and resumes in July and these applications are now on file in the County Delegation office. You have asked three questions concerning the appointment of an individual to the position of executive director.

The position of executive director of the Registration and Elections Commission was established by Act No. 182 of 1991. The executive director reports directly to the Chairman of the County Legislative Delegation. The job description of this position provides the executive director is responsible for planning, directing, coordinating and certifying all primary, general and special elections for the county. The executive director also supervises staff, plans the activities and directs the daily operations of the Department of Registrations and Elections.

Question 1

How much information, if any, regarding the applications should be made available to the public and/or the media.

The Aiken County Legislative Delegation is considered a public body for purposes of the Freedom of Information Act. See, Ops. Atty. Gen. dated September 13, 1995,

April 15, 1986 and September 6, 1984. The General Assembly has recently amended the Freedom of Information Act to include a provision regarding the disclosure of employment applications by a public body. Act No. 423 of 1998. This amendment, which alters Section 30-4-40 of the South Carolina Code of Laws, reads as follows:

(a) "A public body may but is not required to exempt from disclosure the following information:"

"() All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the material described in this item, the public body must disclose, upon request, the number of applicants considered for the position. For purposes of this item 'materials relating to not fewer than the final three applicants' do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section."

As you can see, the Legislative Delegation is now required to disclose, upon request, materials relating to not fewer than the final three applicants under consideration for the position of executive director. However, as set forth by the statute, these materials do not include and, thus, the Legislative delegation is not required to disclose, information concerning these applicants' income tax returns, medical records, social security numbers or other information otherwise exempt from disclosure by Section 30-4-40. The Legislative Delegation must also disclose the number of applicants considered for the position.

### Question 2

[P]lease provide, in writing, a statement detailing the breakdown of votes required to fill the vacancy (does it require a majority of the Delegation to approve the appointment or does it take a majority of the Senators and a majority of the Representatives).

Act No. 182, Section 1(E) provides as follows:

The executive director shall be appointed and may be removed by a majority vote of the Senators and a majority vote of the members of the House of Representatives representing Aiken County.

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According to the clear language of the Act, in order to be properly appointed, the executive director must receive a majority vote of the Senators and a majority vote of the Representatives representing Aiken County. The Act does not call for, nor allow, a majority vote of the Legislative Delegation as a whole.

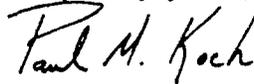
**Question 3**

[P]lease provide, in writing, an opinion as to the legality of the Chairman of the Delegation appointing someone to fill the vacancy should a suitable applicant not be found prior to the current employee's retirement.

Act No. 182 sets forth the method of appointment for the executive director. As previously stated, the Act provides that the executive director shall be appointed by a majority vote of the Senators and a majority vote of the members of the House of Representatives representing Aiken County. The Act does not contain a provision permitting the Chairman of the Delegation to make the appointment without first having the approval of the Senators and House members as set forth in the Act. Therefore, unless the appointment procedures of the Act are first followed, the Chairman of the Delegation would not have the authority to appoint the executive director.

With kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
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Deputy Attorney General