

The State of South Carolina

3456
Library



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

January 6, 1989

W. C. Keels, Esquire
Chester County Attorney
Post Office Box 547
Chester, South Carolina 29706

Dear Mr. Keels:

As you were advised by Attorney General Medlock, your letter of December 8, 1988 was referred to the Opinion Section for response. You had inquired as to the appointment authority of Chester County Council with respect to the Chester County Mental Retardation Board and the Chester County Council on Aging, Inc. For the reasons following, we concur with your belief that Chester County Council would not have the authority to appoint the members of the governing bodies of these two entities.

The statute which must be applied in this instance is Section 4-9-170, Code of Laws of South Carolina (1976), which provides:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

W. C. Keels, Esquire
Page 2
January 6, 1989

Thus, it must be determined whether these two entities are "county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution."

As you point out, the Chester County Mental Retardation Board was established pursuant to Section 44-21-830 of the Code, which is a general law. You further pointed out that an opinion of this Office dated July 5, 1979, concluded that the members of the Williamsburg County Mental Retardation Board would not be subject to appointment by Williamsburg County Council since the Board was established by general law (which makes other provisions for appointment of the members). The same conclusion was reached in opinions of this Office dated September 3, 1981; January 28, 1980; and February 1, 1979. Thus, it must be concluded that members of the Chester County Mental Retardation Board would not be subject to appointment by Chester County Council but would instead be appointed according to Section 44-21-830 of the Code.

You have advised that the Chester County Council on Aging is a private, non-profit corporation which has tax-exempt status with the Internal Revenue Service. A copy of the entity's by-laws enclosed with your letter indicates that the membership of the entity selects its governing board members. Though Chester County Council appropriates funds for this entity, I am not aware of any statutory or constitutional provision which would permit Chester County Council to select the entity's board members, as the entity is not a county board, committee, or commission, but is instead a private, non-governmental organization.

We trust that the foregoing will satisfactorily respond to your inquiry. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

Robert D. Cook

ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS