

The State of South Carolina



Office of the Attorney General

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August 30, 1989

Peter D. Hyman, Esquire
Florence County Attorney
Post Office Box 1770
Florence, South Carolina 29503

Dear Mr. Hyman:

By your letter of August 10, 1989, you have asked that this Office reconsider an opinion rendered previously, on September 1, 1988, concerning appointments to the Florence City-County Airport Commission. You have advised that under its home rule authority, Florence County Council has enacted an ordinance which supersedes the legislative act interpreted in that opinion. Thus, it is necessary to evaluate the appointment provisions of the ordinance in terms of one who has served only a partial term on the Commission.

Prior Opinion

The opinion of this Office dated September 1, 1988, construed a provision in Act No. 482, 1973 Acts and Joint Resolutions, which provided in relevant part as to members of the Florence City-County Airport Commission: "Members shall not be eligible to succeed themselves but shall be eligible for reappointment after two years' absence from the commission." Because the language clearly stated that members could not succeed themselves and further because no mention was made of length of term or service of a full, as opposed to a partial, term, this Office concluded that a member of the Commission who has served only part of a term would not be able to succeed himself. Instead, that individual would be eligible to serve again on the Commission only after a two years' absence from the Commission.

This opinion remains the opinion of this Office as long as the provisions of Act No. 482 of 1973 are being followed to make appointments to the Florence City-County Airport Commission. The conclusion reached therein is not clearly erroneous. As you have pointed out, there is another consideration of which this Office was not aware when the previous opinion was undertaken.

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Home Rule Act

In Section 3 of Act No. 283, 1975 Acts and Joint Resolutions, the Home Rule Act, is the following:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner....

This provision was construed, relative to the Florence City-County Airport Commission, in an opinion of this Office dated June 12, 1980; the conclusion reached therein was that Florence County Council was empowered as of January 1, 1980, to adopt an ordinance modifying the provisions of Act No. 482 of 1973.

Florence County Ordinance

By Ordinance No. 20-79/80, enacted April 21, 1981, Florence County Council modified the provisions of Act No. 482 of 1973. Codified in Section 2-107 of the Florence County Code, the provision as to membership on the Florence City-County Airport Commission now states: "Members shall be eligible to serve on the commission for two consecutive three-year terms." This language is substantially different from that in Act No. 482 of 1973 and distinguishes the commission member from his term of service. The effect of a member's serving only a partial (i.e., remainder of an unexpired) term thus remains to be considered.

This Office has advised previously that "the general weight of authority and a better rule is that a partially served term is not to be considered as a full term or as coming within the prohibition against the holding of more than two consecutive terms." Op. Atty. Gen. dated August 13, 1981. See also Ops. Atty. Gen. dated January 28, 1980 (enclosed); August 30, 1982; August 16, 1985; and April 11, 1984. Thus, one who has served a partial (i.e., the remainder of an unexpired) term on the Florence City-County Airport Commission would be eligible to serve two full terms on the Commission, under the terms of the ordinance.

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Conclusion

If Act No. 482 of 1973 is being followed to make appointments to the Florence City-County Airport Commission, it remains the opinion of this Office that one appointed to serve a partial term would be a member and could not succeed himself. If, however, the terms of Ordinance No. 20-79/80 are being followed, it is the opinion of this Office that one serving a partial term may then succeed himself to serve two consecutive three-year terms, subject to his continued appointment.

While we feel that our earlier conclusion was correct, we must rely on local officials to advise when local laws adopted by the General Assembly prior to the advent of home rule may have been superseded by ordinance of a municipal or county council. We appreciate your bringing the county ordinance to our attention so that any confusion as to appointments and service on the Commission may be clarified.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nnw
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: Timothy E. Meacham, Esquire
Florence City Attorney