

The State of South Carolina



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

February 29, 1988

The Honorable G. Ralph Davenport, Jr.
Member, House of Representatives
326-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Davenport:

By your letter of February 18, 1988, you have asked several questions concerning the governing body of the Boiling Springs Volunteer Fire Department and their operations. After a brief discussion of the Department's enabling legislation, each of your questions will be separately addressed.

The Boiling Springs Volunteer Fire Department of Spartanburg County was established pursuant to Act No. 1189 of 1958, as amended by Act No. 1233 of 1962. Of particular concern to your inquiry is Section 2 of the acts which, after amendment in 1962, now reads:

There is hereby established a fire control board for the Boiling Springs Fire District in Spartanburg County to be composed of three members who shall be appointed by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation for a term of six years. Provided, however, that if at least twenty per cent 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 member whose term 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. The members of the board shall serve

The Honorable G. Ralph Davenport, Jr.
Page 2
February 29, 1988

without pay and shall file annually a report with the Spartanburg County Board of Control not later than November first of each year, showing all activities and disbursements made by the board during the year.

Prior to amendment in 1962, Section 2 read as follows:

There is hereby established a fire control board for the Boiling Springs Fire District in Spartanburg County to be composed of three members who shall be appointed by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation for a term of six years. Provided, the original members of the board shall be David Koon, P. D. Sloan and A. C. Brown, who shall be appointed for two years. Provided, further, the successors to the appointed board members shall be elected in the primary election held in 1960 and the members elected shall determine, by lots, the length of terms of their respective offices so that they shall be staggered for two, four and six years. The members of the board shall serve without pay and shall file annually a report with the Spartanburg County Board of Control not later than November first of each year, showing all activities and disbursements made by the board during the year.

Question 1

Is there any intent to have a staggered scheme to hold office?

In Section 2 before amendment in 1962, there was a definite intent to establish a scheme for the elected commissioners by which one six-year term would expire every two years, as evidenced by the language that "the members elected shall determine, by lots, the length of terms of their respective officers so that they shall be staggered for two, four and six years." An election for commissioners was required, by the 1958 act, to be held in 1960, and at that time, staggered terms would have been established. Whether the election was held is unknown to this Office; the records available at the Department of Archives are unavailable for the years 1958 through 1964.

The Honorable G. Ralph Davenport, Jr.

Page 3

February 29, 1988

As noted, in 1962 the law was amended to permit, rather than require, election of the Department's governing body. You have advised that the election provisions permitted thereunder have never been implemented, and thus the governing body remains "appointed by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation for a term of six years." A staggered scheme of appointment is not expressly mandated but may be implied from the language of the proviso:

Provided, however, that if at least twenty per cent 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 member whose term will expire during such year, for a six-year term. [Emphasis added.]

Giving these words their plain and ordinary meanings, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), it appears that the General Assembly contemplated that only the term of one member would expire during a given election year. Considering that elections and staggered terms (as determined by lots) were statutorily required earlier, and that an election occurring after the 1962 amendment would be for one member at a time, we conclude that a staggered scheme of election or appointment was intended.

Question 2

Is the legislative intent to have staggered terms of office being violated?

A review of records of the Secretary of State and the Department of Archives shows that on May 25, 1984, commissioners McAbee, Lee, and Lancaster were appointed commissioners of the Department; their respective terms were to expire on April 20, 1988; April 20, 1990; and April 20, 1986. On June 17, 1986, commissioner Lancaster was reappointed to a six-year term to expire on April 20, 1992. Thus, all three commissioners are currently serving terms which will expire on a staggered basis. We note that commissioner McAbee's term expires on April 20, 1988; his successor could be appointed (or he could be reappointed) for a six-year term, or the election scheme could be undertaken if the proviso of Section 2 is followed. We must conclude

The Honorable G. Ralph Davenport, Jr.

Page 4

February 29, 1988

that the legislative intent to stagger the expiration of the terms of office is being followed.

Research was undertaken by this Office at the Department of Archives to determine the full scope of appointments, terms of office, and expiration dates of all appointees to the governing body since its inception. Due to the apparent determination by the Delegation in 1984 that staggered schemes were warranted and further to various gaps in the records at the Department of Archives, the history of appointments prior to 1984 is of no great value at this point in time.

Question 3

How is the chairman of the governing body (commission) to be selected?

Selection of a chairman is not covered within the Department's enabling legislation. Thus, the chairman may be selected in any manner which is deemed appropriate by a majority of the commissioners. This Office is unaware of any operating procedures, custom, or precedent which may have been established by the commissioners and thus cannot comment on how the chairman may have been selected in the past.

It should be noted that the manner of selection of the chairman may be changed from time to time as deemed appropriate by the commissioners. See Op. Atty. Gen. dated April 14, 1986 (enclosed).

Question 4

What percent vote is required for the Commission to take action on matters before it?

Again, this question is not answered by the enabling legislation. In the absence of legislation to the contrary, a favorable majority vote of the quorum present is required to take action on a matter. 67A C.J.S. Parliamentary Law §8; Op. Atty. Gen. dated April 14, 1986. The commissioners may adopt a more restrictive rule if they choose, and they may also modify a more restrictive rule to provide that a majority vote prevails, if that is their desire.

Question 5

Does the chairman or any member of the commission have the authority to refuse to carry out the commission's vote?

The Honorable G. Ralph Davenport, Jr.
Page 5
February 29, 1988

To permit one member, chairman or otherwise, to refuse to carry out the vote of the commission would, in effect, give that member a kind of veto power over the vote of the commission. The enabling legislation referred to above does not appear to contemplate such a veto power, as no one member is given a greater vote or authority than any other member. See Op. Atty. Gen. dated November 13, 1987.

Question 6

Do subcommittees or fact-finding committees of the commission or the Department come under the guidelines of the Freedom of Information Act?

By the 1987 amendments to Section 30-4-20(a), Code of Laws of South Carolina (1987 Cum. Supp.), the definition of "public body" was expanded to include "committees, subcommittees, advisory committees, and the like of any such body by whatever name known." Any sort of committee of the commission or the Department (which would be considered a special purpose district or other public agency) would be subject to the requirements of the Freedom of Information Act. See Op. Atty. Gen. dated January 14, 1988 (copy enclosed). A copy of the Act is enclosed herewith to assist the Department, its governing commission or any part thereof to comply with the Act.

With kindest regards, I am

Sincerely,

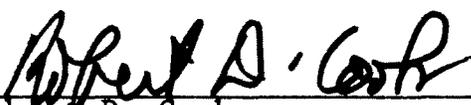
Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions