

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

November 17, 1988

Walton J. McLeod, III, Esquire
General Counsel
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Jacquelyn S. Dickman, Esquire
Assistant General Counsel
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. McLeod and Ms. Dickman:

You had requested an opinion as to the status of a member of the South Carolina Board of Health and Environmental Control who has been sworn in as a member of the House of Representatives on November 14, 1988. It is our understanding that the Governor has made an interim appointment to take the place of the individual on the Board of Health and Environmental Control subsequent to his taking the oath of office as a Representative; thus, the questions you have raised are now moot.

The question remains as to who should be the appropriate appointee to serve on the Board: the incumbent who has recently taken his oath as a Representative, or the Governor's interim appointee. As a matter of public policy and equity, the interim appointee would be the more appropriate appointee to serve. A dual office holding situation technically occurs if a Representative should also serve on the Board, though the individual would actually be a de facto Board member since he has taken the oath as a House member more recently. By accepting the second office, he has, by law, vacated

Mr. McLeod
Ms. Dickman
Page 2
November 17, 1988

the first office, thus creating a vacancy on the Board. Walker v. Harris, 170 S.C. 242 (1933); Bradford v. Byrnes, 221 S.C. 255, 70 S.E. 228 (1952). The interim gubernatorial appointment, although de facto until consented to by the Senate, would be favored since it is later in time and fills the vacancy created when the Board member accepted his office as a House member.

We would also add that actions taken by the interim appointee, as a de facto officer, with respect to the public and third parties, would be as valid and effectual as those of a de jure officer, unless and until a court should declare otherwise. Op. Atty. Gen. dated February 10, 1984; State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Strob. 92 (S.C. 1848); 67 C.J.S. Officers § 276. Thus, the interim appointee may attend meetings of the Board, vote, and otherwise carry out his responsibilities until and unless a court should declare otherwise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions