

The State of South Carolina

LIB. 2318



Office of the Attorney General

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August 6, 1986

The Honorable Mickey D. Burriss
Member, House of Representatives
Post Office Box 9186
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Dear Representative Burriss:

By your letter to Attorney General Medlock dated July 9, 1986, you have asked about the procedure for electing members of the governing body of the Capital View Fire Protection District. We have researched the origin of the District and will discuss it more fully below, with our suggestions.

Origin of Capital View

As you are well aware, the details of the origin of the Capital View Fire Protection District have been uncertain for a long time. We have located documents and newspaper articles which give clues sufficient to guess with some degree of certainty as to its origin. Apparently the only statute which was adopted by the General Assembly for the District was Act No. 1345, 1964 Acts and Joint Resolutions, a copy of which is enclosed, authorizing the District to borrow funds to purchase fire equipment. We have located no enabling legislation for the District.

Through the Secretary of State, we located the certificate of incorporation for the Capital View Fire Company, dated August 3, 1955, a copy of which is enclosed. A notation of "Dissolved by Forfeiture" dated July 16, 1973, is stamped upon the face of the certificate. An article in "The State" dated February 1, 1961 (page 2-A) (enclosed) states that the Capital View Fire District was to assume financial responsibility for the "Capital Volunteer Fire Company;" presumably that explains the dissolution of the corporation.

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We have located a copy of the ballot (enclosed) used in a special election held January 31, 1961, to determine the electorate's desire to establish the District. The questions which were voted upon included the area to be included within the proposed District, three commissioners of the District, and a name for the District. The format of the ballot suggests strongly that it was set up to comply with the requirements of Section 6-11-60, Code of Laws of South Carolina. 1/

A "Notice of Election" was published in "The State" on January 18, 1961, by the Richland County Clerk of Court. From the enclosed notice, it is apparent that the Clerk of Court accepted a petition for the creation of the proposed District on December 12, 1960; such a petition being presented to the Clerk of Court strongly suggests that Section 6-11-20 of the Code was being followed by the petitioners. The notice states that

a majority of the resident landowners in the proposed Capitol [sic] View Volunteer Fire Protection District or the owners of more than half of the land and acreage which will be affected by or assessed for the expense of the proposed improvements, as shown by the assessment rolls

submitted the petition. This language virtually tracks the requirements of Section 6-11-20. These factors lead to the conclusion that the Capital View Fire Protection District was established following this particular statutory procedure.

We are attempting to locate copies of the original petition and Notice of Election from the Clerk of Court for Richland County. If we are successful, we will send copies to you.

Selection of Commissioners

As seen in the article from "The State" dated February 1, 1961, the commissioners initially elected were H. O. Stuckey, J. W. Banks, and E. F. Teague. According to Sections 6-11-60 and -80 of the Code, the initial commissioners were to draw by lot to determine which commissioner would hold the two, four, and six year terms respectively, thus establishing a staggered scheme of electing commissioners. Thereafter, newly-elected commissioners were to serve for a term of six years and until

1/ Copies of the relevant statutes in Chapter 11 of Title 6 of the Code are enclosed.

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their successors were elected and qualified. Vacancies were to be filled by election of a commissioner by the remaining commissioners to fill the unexpired term, in the event of a vacancy caused by circumstances other than expiration of a term of office.

Although there is law to the contrary, when a term is specified for a particular office and the enabling legislation, as in this case, specifies that one filling a vacancy created by death, resignation, and so forth holds only for the unexpired term, that individual would not serve a full six-year term but would hold only for the time remaining on his predecessor's term. See Re Advisory Opinion to the Governor, 31 Fla. 1, 12 So. 114 (1893); 63A Am. Jur.2d Public Officers and Employees § 164; 67 C.J.S. Officers § 79. The determination of whom each commissioner succeeded and the reason (end of term or early vacation) becomes important, as you will soon see.

How to Elect Commissioners Now

You have advised that since the initial election of commissioners, no subsequent election has been held. Instead, the remaining commissioners appoint someone to fill a vacancy when one exists. You have asked how the commissioners may now be elected.

The ideal situation would be that in which records have been kept as to which member of the commission was appointed in a given year to take the place of a particular commissioner. If the six-year terms have been adhered to, it might be relatively easy to determine whose term expires next and then to request that an election (either special or concurrently with a general election) be set, working with the Richland County Election Commission. Because previous selections of commissioners have more or less complied with the terms of Section 6-11-80, a change to election of commissioners might not be viewed as a change under the Voting Rights Act of 1965, as amended, thus avoiding the necessity of preclearance.

We acknowledge that the ideal situation probably does not exist and that there may be some difficulty in recreating the sequence of appointments. In this instance, when it is not known when commissioners' terms would expire, the provisions of Sections 6-11-70 or -80 could be followed. Section 6-11-70 would permit the Richland County Council to adopt an ordinance or resolution, to establish a uniform election date for the District (i.e., concurrently with the general election); or the commissioners could request that the Richland County Election

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Commission set a special election. The advantage of Section 6-11-70 appears to be the elimination of the necessity, every other year, to request the Election Commission to hold a special election; including election of the commissioners in the general election scheme would undoubtedly result in saving time and money for all concerned. If a special election is held, the date must be precleared by the Department of Justice.

Upon the selection of three commissioner by election, lots could be drawn as provided by Section 6-11-80 to establish the staggered scheme of future elections.

We would note that if all three commissioners should be elected at one time and terms established pursuant to Section 6-11-80, such might easily require approval under the Voting Rights Act by the United States Department of Justice. The cautious approach would be to at least seek guidance as to the necessity of preclearance from the Department of Justice.

How to Declare Candidacy

Whether it should be determined to elect one or all three commissioners at an ensuing general or special election, the question remains: how does an interested individual declare his candidacy? Sections 6-11-10 et seq. do not specify, so resort must be had to the general election laws of the State.

Section 7-11-10 of the Code provides that nominations for candidates for offices to be voted on in general or special elections may be made by political party primary or convention, or by petition. The most probable method to be used in this instance would be the petition method, as special purpose district elections are most often nonpartisan. Sections 7-11-70 and 7-11-71 (enclosed) specify the number of electors who must sign the candidate's petition and further how that number is to be determined. The petition, once completed, is submitted to the Richland County Election Commission. Other statutes on format of the petition and how the petition is to be verified are also enclosed.

If the election for commissioner(s) is to be held in the general election, newly amended Section 7-13-351 applies to set the date of August first generally as the deadline for submitting the petition of candidacy. A copy of Act No. 344 of 1986, amending Section 7-13-351, is enclosed to give the finer details of the deadline determination.

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The portion of Section 7-13-351 which was not amended by the 1986 act contains the deadlines for submission of petitions for a special election. While we are enclosing a copy of the Code section for more detailed consideration, the deadline is, in general, forty-five days prior to the date of the holding of the special election. Again, the date of the special election must be precleared.

Should it be desired to fill one or more of the commissioners' positions in the upcoming general election, it would now be too late to submit the required petitions for nomination since that deadline was August first. A special election may thus be the better choice if the commissioners desire to resume election of members at the earliest possible time, although the ultimate determination as to the best course to follow would be left to the commissioners. If a special election should be held in the near future and then Richland County Council should be requested to schedule a uniform election date pursuant to Section 6-11-70, care must be taken that no term of one elected in the special election be shortened by the implementation of the election provisions. See Section 6-11-70.

We hope that the above information will be beneficial. If you or the commissioners should need clarification or additional assistance, please do not hesitate to ask.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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