



ALAN WILSON  
ATTORNEY GENERAL

October 28, 2015

Mr. Kevin A. Shwedo  
Executive Director  
South Carolina Department of Motor Vehicles  
Post Office Box 1498  
Blythewood, SC 29016

Dear Director Shwedo:

You have requested the opinion of this Office regarding the legality of the structure of an advisory study committee created by the General Assembly as part of Proviso 82.10 of the 2015-2016 Appropriations Act. H.R. 3701 § 82.10, 121st Cong. (S.C. 2015) (Act 91). Specifically, Section 82.10 of the Act provides as follows:

82.10 (DMV: Study of Motorcycle Usage and Safety)

From the funds appropriated to the Department of Motor Vehicles, a committee shall be established to study motorcycle usage and safety in South Carolina. The composition of the study committee shall be as follows: one member appointed by the governor; two members appointed by the Chairman of the Senate Transportation Committee, one of whom must be a member of A Brotherhood Against Totalitarian Enactments (ABATE) of South Carolina; two members appointed by the Chairman of the House Education and Public Works Committee, one of whom must be a member of ABATE of South Carolina; the Secretary of Transportation or his designee who shall have expertise in motorcycle safety issues; the Director of the Department of Public Safety or his designee who shall have expertise in motorcycle safety issues; and the Director of the Department of Motor Vehicles or his designee who shall have expertise in motorcycle safety issues. The committee shall study available data related to motorcycle usage and applicable laws and regulations. Before December 15, 2015, the committee shall issue its findings and recommendations to the Governor and to the members of the General Assembly.

Id.

Your concern relates to the make-up of the committee, being that “the committee is not required to have any representatives from the general public, in contrast to the mandate that twenty-five percent of its membership must be from a particular private organization [ABATE].” Furthermore, you state that “I believe that an Opinion is necessary before anyone expends time putting together a report to the Legislature which may not have any value because of the committee structure.”

### Law / Analysis

Dating back to 1906, the South Carolina Supreme Court has acknowledged the ability of the legislature to gather facts: “[t]he power of the General Assembly to obtain information on any subject upon which it has power to legislate, with a view to its enlightenment and guidance, is so obviously essential to the performance of legislative functions that it has always been exercised without question.” Ex parte Parker, 74 S.C. 466, 55 S.E.122, 124 (1906). Furthermore, it is well settled that this power may be exercised by a committee. See, e.g., id.; see also Robertson v. Peeples, 120 S.C. 176, 115 S.E. 300 (1919). Our Office has previously elaborated on the investigative power of the legislature, one opinion providing that “it is a general principle of law that ‘the power to investigate is an essential corollary to the power to legislate.’ ” Op. S.C. Att’y Gen., 1986 WL 191969 (Jan. 14, 1986) (citing 81A C.J.S. States § 56 (now 81A C.J.S. States § 114)). Furthermore, in regards to advisory committees, it has been described in the federal context that:

[t]hroughout history our government has relied on advisors and advisory committees as sources of inexpensive expertise. These committees, composed of individuals from both the private and public sector, “aid in the effective administration of programs and activities of government.” Advisory committees confront myriad problems and provide expertise ranging from technical advice to advice of personnel selection to pure policy analysis.

Michelle Nuskiewicz, Twenty Years of the Federal Advisory Committee Act: It’s Time for Some Changes, 65 S.Cal.L.Rev. 957, 957 (1992) (citations omitted).

The committee created by the South Carolina Legislature within Proviso 82.10 of the 2015-2016 Appropriations Act is a study committee with the task of studying motorcycle usage and safety in South Carolina and issuing its findings and recommendations to the Governor and to the members of the General Assembly. H.R. 3701 § 82.10, 121st Cong. (S.C. 2015) (Act 91). Therefore, the committee will function in a purely advisory capacity, and its findings and recommendations will not become effective unless and until the General Assembly acts to implement them.

While the United States Legislature has enacted the Federal Advisory Committee Act setting forth “standards and uniform procedures . . . [for] the establishment, operation, administration, and duration of advisory committees” and further directing that advisory members must be composed of members “fairly balanced in terms of the points of view represented and the functions to be performed,” we know of no companion law in South Carolina to the Federal Advisory Committee Act. 5 U.S.C.A. app. 2 § 2(b); 5 U.S.C.A. app. 2 § 5(b)(2). Nevertheless, we are of the opinion that the proposed structure of the study committee – with appointments from various entities including the Chairman of the Senate Transportation Committee; Chairman of the House Education and Public Works Committee (one of the two members appointed by each being a member of ABATE); the governor; the Secretary of Transportation or his designee; the Director of the Department of Public Safety or his designee;

and the Director of the Department of Motor Vehicles or his designee – is set up to foster fair and balanced points of view from various interests and perspectives in motorcycle safety.

Further support comes from other states with motorcycle safety committees. While the compositions and overall purposes of the committees vary, the makeup of these advisory committees seek to comprise a range of viewpoints and perspectives. One example is Mont. Code Ann. § 20-25-1004, by which the Montana Legislature created the “motorcycle safety advisory committee” “to advise the board of regents and the department of justice concerning motorcycle rider safety issues, motorcycle training, motorcycle endorsement testing, and other matters relating to motorcycle safety.” The committee consists of: one peace officer appointed by the governor; one certified instructor of motorcycle safety training appointed by the board of regents; two motorcycle riders representing motorcycle riding groups, such as American motorcyclist association of American bikers aiming toward education (ABATE), to be nominated by these groups for appointment by the governor; and one representative from the department of justice who is appointed by the attorney general. Mont. Code Ann. § 20-25-1004.

To provide another example, the advisory committee for motorcycle safety created by the Idaho Legislature provides that that the “program advisory committee [shall] consist[ ] of five (5) persons representing various interests in motorcycle safety including but not limited to, motorcycle riding enthusiast, dealers and law enforcement personnel.” Idaho Code Ann. § 33-4905 (2009).

We also point out that the Oklahoma Legislature has established an “Advisory Committee for Motorcycle Safety and Education.” Specifically, Okla. Stat. Ann. tit. 47, § 40-122 (2010) provides as follows:

- A. There is hereby created the Advisory Committee for Motorcycle Safety and Education which shall be comprised of the Administrator of the Motorcycle Safety and Education Program in the Department of Public Safety, who shall serve as chair of the Committee and shall be a nonvoting member, and seven (7) voting members, six of whom shall be appointed by the Commissioner of Public Safety and one of whom shall be appointed by the Insurance Commissioner. One member shall be a certified instructor of motorcycle safety and education; three members shall be licensed and safety course certified motorcycle operators/owners; one member shall represent private sector motorcycle rider education schools; one member shall be a representative of the Oklahoma Highway Safety Office; and the member appointed by the Insurance Commissioner shall be an employee of the Insurance Commissioner’s Office.

Like the examples of various motorcycle safety advisory committees reflected above, we believe the committee appointments defined by Proviso 82.10 will result in balanced views for the committee’s purpose: studying motorcycle usage and safety in South Carolina. Nevertheless, we reiterate that the study committee only holds advisory powers and its report and recommendations cannot be implemented without action on behalf of the legislature.

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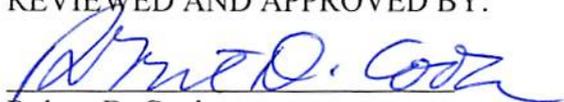
Accordingly, it is our opinion that the direction imposed by Proviso 82.10 of the 2015-2016 Appropriations Act for the composition of the committee to study motorcycle usage and safety in South Carolina is properly constituted.

Very truly yours,



Anne Marie Crosswell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General