

1977 WL 37313 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 15, 1977

*1 Representative Charles E. Hodges
4307 Broad Street
Loris, South Carolina 29569

Dear Representative Hodges:

In response to your request for an opinion from this Office as to whether or not the Circuit Court order in [Booth v. Grissom, app'l. dismissed, 217 S.E.2d 223 \(1975\)](#), has declared unconstitutional those portions of Act No. 1269 of 1974 [58 STAT. 2990 (1974)], Act No. 688 of 1973 [58 STAT. 1322 (1973)] and Act No. 690 of 1973 [58 STAT. 1323 (1973)] authorizing the Horry County Legislative Delegation to appoint the Horry County Tax Assessor, the Horry County Coordinator of Federal Funds and the Grand Strand Flood District Building Inspector, respectively, I am enclosing a copy of an opinion to Senator Ralph Ellis which addresses that question.

You have also inquired as to whether or not those same provisions in the three pieces of legislation hereinabove referred to are constitutional quite apart from any effect which the lower court's order in the [Booth](#) case might have. Inasmuch as those statutes have already been enacted, this Office must presume them to be constitutional until and unless a court of law declares otherwise. If, however, an action were brought pursuant to the Uniform Declaratory Judgments Act [§§ 10-2001 *et seq.* of the Code], my opinion is that those statutes would most probably be declared unconstitutional as violative of Article I, Section 8 of the South Carolina Constitution of 1895, as amended. The general rule appears to be that:

. . . the legislature cannot usurp the powers of the executive department by exercising functions of the latter. The legislature can neither enforce the laws which it has the power to make, nor, in the usual instance, appoint the agents charged with the duty of such enforcement. . . . 16 AM.JUR.2d [Constitutional Law](#) § 231 at 481.

Although there is authority to the contrary [see, e.g., 16 C.J.S. [Constitutional Law](#) §§ 131 at 548 and § 168 at 848], that United States Supreme Court has in the past held that the legislature 'ought to have nothing to do with designation the man to fill [an] office.' [Myers v. United States, 272 U.S. 52, 71 L.Ed. 160, 47 S.Ct. 21](#). See also, [Springer v. Gov't of the Phillipine Islands, 277 U.S. 189, 72 L.Ed. 845, 48 S.Ct. 480](#). I am enclosing a copy of an earlier opinion from this Office which is also instructive on the question you have posed. You should note, however, that until and unless there is a successful court challenge to the pertinent provisions of the three statutes in question, the validity of those provisions continues to be presumed so that their mandates should be followed.

I am also enclosing the copy of Judge Morrison's order in [Booth v. Grissom](#) which you lent me last week.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

1977 WL 37313 (S.C.A.G.)