



ALAN WILSON  
ATTORNEY GENERAL

December 21, 2016

Kenneth Battle, Chairman  
South Carolina Commission for Minority Affairs  
2221 Devine Street, Suite 408  
Columbia, South Carolina 29205

Dear Mr. Battle,

Attorney General Alan Wilson has referred your letter to the Opinions section regarding whether Section 1-31-30 of the South Carolina Code of Laws authorizes the Board of Commissioners of the Commission for Minority Affairs (“the Commission”) to hire personnel in addition to the executive director position.

#### Law/Analysis

Based on the language and structure of Chapter 31 of Title I of the South Carolina Code of Laws, it is this Office’s opinion that the Board of Commissioners is authorized under S.C. Code § 1-31-30 (1976 Code, as amended) “to hire an executive director and other personnel” and that there is no legislative prohibition on the Board taking an active role in hiring employees.

To our knowledge, no South Carolina court has interpreted this statute. Therefore, we turn to the rules of statutory construction to guide our interpretation of Section 1-31-30. The primary rule of statutory construction requires a determination of the General Assembly’s intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where the statutes’ language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh’g denied (Aug. 5, 2015). Courts should consider not only the particular clause in which a word may be used, but the word and its meaning in conjunction with the purpose of the whole rule and the policy of the rule. Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005). With these principles in mind we turn to the text of the Section 1-31-30 and the other relevant statutes in Chapter 31 of Title I of the South Carolina Code of Laws.

Section 1-31-30 was enacted with the rest of Title I, Chapter 31 by the General Assembly in 1993 Act No. 164, Part II, § 110. Chapter 31 establishes the Commission as follows:

There is created a State Commission for Minority Affairs consisting of nine members and the Governor ex officio. The Governor must appoint one person from each of the congressional districts of the State and two persons from the State at large upon the advice and consent of the Senate. The Governor shall designate the chairman. The

members serve for a term of four years and until their successors are appointed and qualify. A vacancy must be filled in the same manner as original appointment for the remainder of the unexpired term. A majority of the members of the commission must be African American.

S.C. Code Ann. § 1-31-10. The stated purpose of the Commission is “to study the causes and effects of the socio-economic deprivation of minorities in the State and to implement programs necessary to address inequities confronting minorities in the State.” S.C. Code Ann. § 1-31-20. The Commission’s powers and duties are listed in Section 1-31-40. The Commission is explicitly granted authority to “delegate these powers and duties as necessary.” S.C. Code Ann. § 1-31-40(B). The Commission is further authorized “to promulgate those regulations necessary to carry out its duties under this chapter.” S.C. Code Ann. § 1-31-50. These statutes provide the context by which we analyze Section 1-31-30 where the plain language does not fully satisfy the questions presented by this opinion request.

We now turn to the text of Section 1-31-30 which reads, “The commission is authorized to hire an executive director and other personnel necessary to carry out its duties and functions under this chapter. The General Assembly shall provide for the funds in the annual appropriations act.” S.C. Code Ann. § 1-31-30. There is no doubt that the power to hire the Commission’s executive director and the power to hire other necessary personnel is granted to the same entity. The statute plainly and unambiguously grants the commission the power to hire both an executive director and other personnel. *Id.* Your question asks for clarification of what entity is granted this hiring power by the referenced term “commission.”

Read in context with the remaining sections of Title I, Chapter 31, it is this Office’s opinion that “the commission” as used in Section 1-31-30 means the “State Commission for Minority Affairs consisting of nine members and the Governor ex officio.” S.C. Code Ann. § 1-31-10. Section 1-31-10 contains the first and only reference to a commission. This reference introduces the subject of Chapter 31 which is the State Commission for Minority Affairs. All other references to “commission” within Chapter 31 use the definite article “the” and a singular noun. “The” is used to refer to a person or thing that is already known to the reader or which has been previously mentioned, introduced or discussed.<sup>1</sup> The use of the definite article and the singular noun show that the General Assembly intended these subsequent references to “commission” in Chapter 31 to refer to the State Commission for Minority Affairs. See Holman v. Bulldog Trucking Co., 311 S.C. 341, 346, 428 S.E.2d 889, 892 (Ct. App. 1993). Therefore, the nine members and the Governor ex officio which make up the State Commission for Minority Affairs are “the commission” authorized by Section 1-31-30 to hire personnel necessary to carry out its duties and functions. We are unable to locate a prohibition in the South Carolina Code of Laws regarding the Commission’s hiring authority other than the limitation of necessity for carrying out its duties and functions and the General Assembly appropriating funds. Inasmuch as no further provision proscribes the Commission hiring necessary personnel, “the law will not permit such a limitation to be implied.” Op. S.C. Att’y Gen., 2006 WL 2593082 (August 24, 2006).”

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<sup>1</sup> “The” is a definite article, which, according to the American Heritage College Dictionary (3d ed. 1993), is a member of the class of determiners that restrict or particularize a noun. See also Merriam-Webster Online, “definite article” <http://www.merriam-webster.com/dictionary/definite%20article>, (“the word ‘the’ [is] used in English to refer to a person or thing that is identified or specified”).

However, you note in the opinion request that from the time the agency was signed into law in 1993, “the practice has been for the Board of Commissioners to hire the Executive Director and authorize[] the Executive Director to hire other personnel.” It is this Office’s opinion that the Commission is granted the power to delegate its hiring authority by both Sections 1-31-40(B) and 1-31-50. Section 1-31-40(B) authorizes the Commission to delegate the powers and duties listed in Section 1-31-40(A). Similarly, Section 1-31-50 authorizes the Commission to “promulgate those regulations necessary to carry out its duties.” See Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111, 121 (1947) (“Such a rule-making power may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld.”). In fact, the Commission has authorized the executive director to make the “recommendation and selection of persons to serve on the Advisory Committees” subject to the review and approval of the Board of the Commission by regulation. S.C. Reg. 139-203(A). Unless limited by statute or other law, a court is likely to find that the Commission is authorized by the General Assembly to delegate initial personnel screening and hiring decisions. If the Commission wishes to delegate its authority more broadly to the executive director for all personnel hiring, this Office recommends that such action be taken by vote of a majority of the Commission. See Op. S.C. Atty. Gen., 1973 WL 27623 (October 8, 1973). Please note that once such an action is taken, no member of the Commission may then exercise hiring authority within the scope of the delegation without the majority voting to reverse its delegation to the executive director.

### Conclusion

We hope that the guidance provided above will assist you and the Board of Commissioners of the Commission for Minority Affairs in determining whether to amend the Commission’s personnel hiring practices. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General