

1979 S.C. Op. Atty. Gen. 125 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-91, 1979 WL 29096

Office of the Attorney General

State of South Carolina

Opinion No. 79-91

July 11, 1979

\*1 Rotation of appointments to State Development Board among counties rests in the discretion of the governor. Section 13-3-40.

Honorable John C. Lindsay

Honorable Albert Eugene Carmichael, Jr.  
State Senators

Honorable W. Green DesChamps  
Member  
House of Representatives

Gentlemen:

You have requested my opinion as to the order of appointment to the State Development Board from among the various judicial circuits of the State.

Membership on the Board is composed of persons appointed by the Governor, with the advice and consent of the Senate, from each of the judicial circuits within the State. The statute provides, in part:

‘The Governor, in making subsequent (following initial) appointments, shall give due consideration to the rotation of appointees among the counties of each judicial circuit.’ [Section 13-3-40](#), Code of Laws, 1976.

Initial appointments from the Third Judicial Circuit appear to have been as follows:

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The counties within the Third Judicial Circuit are Sumter, Lee, Clarendon and Williamsburg. Each of these counties has had representative membership from it on the Development Board, with the exception of Clarendon County, and it is my understanding that Clarendon County waived its right to have membership appointed from Clarendon County when its rotational term occurred, apparently following the expiration of the term of Mr. Morris. In the absence of such a waiver, Clarendon County would have been entitled to appointment at that time following the expiration of Mr. Morris' term.

As the statute provides, the Governor is required to give ‘due consideration’ to the rotation of appointees among the counties of each judicial circuit. The meaning of the quoted phrase does not appear to have been considered by the Supreme Court of this State, but authorities in other states appear to generally follow the following rule:

‘To give ‘due consideration’ to a particular factor necessarily means to give such weight or significance to it as under the circumstances it seems to merit, and this involves discretion.’

The statute does not specifically refer to a waiver by a county of its representation on the Development Board and I am unaware of any documentary assertion of such a waiver by a county. A similar practice is followed with respect

to appointments to the State Highway Commission, but documentation of its application cannot be ascertained at the present time.

I advise that, in my opinion, the Governor is required to give due consideration to the rotation system among the counties and that he is not inflexibly bound thereto, but may exercise his discretion. The effect to be given to any waivers by a county to representation on the Board should similarly be given due consideration.

Very truly yours,

\*2 Daniel R. McLeod  
Attorney General

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