

1978 WL 35041 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1978

\*1 Honorable John T. Wood  
Member  
House of Representatives  
District No. 17  
Tigerville, South Carolina 29688

Dear Representative Wood:

You have requested an opinion from this Office concerning the authority of the Greenville County Council (Council) to recommend for appointment by the Governor members of the Upper Greenville County Hospital District Commission (Commission). In my opinion, the Council is not so authorized as hereinbelow discussed.

In 1967, the General Assembly created the District as a 'special purpose district' [55 STAT. Act No. 744, § 2 at 1604 (1967)] and established the Commission to govern it initially. The 1967 enactment specified that the Commission was to be composed of 'three resident electors of the District, to be appointed by the Governor upon the recommendation of a majority of the Greenville County Delegation to the General Assembly.' 55 STAT. Act No. 744, § 3 at 1605 (1967). The Act also provided in part:

Upon the expiration of the term of office of any member of the Commission, a successor shall be appointed by the Governor, upon the recommendation of the majority of the Greenville County Delegation . . . . . vacancies shall be filled in the manner provided for the appointment of successors to those initially named.

For the reasons stated in an opinion issued March 25, 1977, a copy of which is enclosed herewith, I believe that a majority of the Greenville County Delegation is to recommend the Commission members for appointment by the Governor. The only factor which might make this Commission different from the one discussed in the March 25, 1977, opinion is that the Commission ceased to be the governing body of the District once the bonds authorized by the 1967 legislation were issued, to wit:

The Commission shall be empowered to enter into a contract with the board of trustees [of Greenville General Hospital], under the terms of which the district shall agree to turn over to the board of trustees the net proceeds of the bonds herein authorized, upon the condition that the board of trustees will construct, . . . , public hospital facilities . . . to be owned by the board of trustees, and that following the construction of the hospital, the board of trustees shall operate such public hospital facilities, staff them properly, and pay all costs of their operation. The hospital facilities shall constitute a part of the general hospital facilities of Greenville County under the operation and control of the board of trustees, . . . 55 STAT. Act No. 744, § 4 at 1606 (1967). [Emphasis added.]

Although the Commission is no longer the governing body, of a special purpose district and, thus, to that extent, is different from the Greenville County General Hospital Board of Trustees discussed in the March 25, 1977, letter [[see, § 4-9-170, CODE OF LAWS OF SOUTH CAROLINA, 1976](#)], nevertheless, that difference is not, in my opinion, critical to the conclusion reached with respect to the latter Board; and, accordingly, I think that the conclusion reached as to that Board would also apply to the Commission.

\*2 You have also inquired as to whether or not Commission members whom the Council has recommended for appointment are validly holding office or if members whose terms have expired but whom the Delegation recommended for appointment are to hold over until their successors are validly appointed and qualify. The 1967 Act provides that: Notwithstanding the expiration of the term of office of any commissioner, he shall continue to serve until his successors shall have been recommended, appointed and qualified, . . . 55 STAT. Act No. 744, § 3 at 1606 (1967).

Consequently, Commission members whom the Delegation recommended for appointment should hold over, despite the expiration of their terms of office, until the Delegation recommends successors for appointment and those successors are appointed and qualify. Nonetheless, any Commission members whom the Council recommended for appointment are at least de facto officers whose actions are presumed to be valid. See, e.g., 63 Am.Jur.2d Public Officers and Employees §§ 504 and 518.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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