



HENRY McMASTER  
ATTORNEY GENERAL

February 9, 2009

The Honorable Kenneth A. Bingham  
Majority Leader  
South Carolina House of Representatives  
518 Blatt Building  
Columbia, South Carolina 29211

Dear Representative Bingham:

This letter is a follow up to our opinion to you of February 6, 2009. The purpose is to clarify one point which was not made clear in the opinion. We emphasize that the conclusion expressed in the Opinion – that the removal procedure contained in S.C. Code Ann. Section 1-3-240(A) is controlling with respect to any removal of Employment Security Commissioners by the Governor – is not altered or modified by this follow up letter.

We note for purposes of clarification that Section 8-11-60 provides that “[t]he manner and method of removal of State officers elected by the General Assembly shall be according to Section 3 of Article XV of the Constitution of South Carolina of 1895 ....” Art. XV, § 3 of the Constitution states that “for any willful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove *any executive or judicial officer* on the address of two thirds of each house of the General Assembly ....” (emphasis added).

While Art. XV, § 3 literally encompasses “any executive ... officer,” our Supreme Court long ago clarified by way of interpretation the scope of this provision in *McDowell v. Burnett*, 92 S.C. 469, 75 S.E. 873 (1912). There, the Court stated:

[e]very executive and judicial officer whose authority and jurisdiction extends over the entire state is concerned, and whose office was created by the Constitution, *or created by statute and filled by the people at large*, is removable by impeachment or by the Governor on the address of the General Assembly or by conviction of embezzlement or of appropriation of trust funds and in these modes only. *All other officers are subject to removal under the provisions of the statute law of the state or under the common law where that is applicable.*

(emphasis added).

The Honorable Kenneth A. Bingham  
Page 2  
February 9, 2009

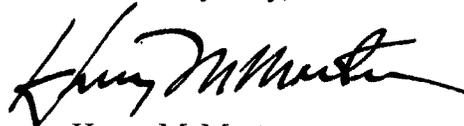
Clearly, as interpreted by the Supreme Court in *McDowell*, Art. XV, § 3 would not be applicable to Employment Security Commissioners because their position is created by statute and they are appointed, not elected by the people. When § 8-11-60 was enacted in 1930, the Court had already clarified Art. XV, § 3. Thus, we do not believe the General Assembly, in enacting § 8-11-60, sought to broaden the reach of Art. XV, § 3 beyond the Supreme Court's interpretation in *McDowell v. Burnett, supra*.

Section 1-3-240 was enacted as part of the Restructuring Act of 1993. As explained below, in interpreting the Restructuring Act, the reasoning of *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) would counsel that § 1-3-240(A) is not limited by § 8-11-60.

In *Hodges*, the Supreme Court concluded that the removal provision (there, § 1-3-240(B)) contained in the 1993 Restructuring Act, is not constrained by earlier legislation providing a specific removal mechanism. The Court there noted that "the Governor's removal power is not in conflict with other removal provisions because it is merely additional to any removal powers conferred by other statutes." *Hodges* cited § 1-3-260, which states that "the power and procedure of removal conferred and provided for in §§ 1-3-240 and 1-3-250 are *additional* to any other removal powers or procedure authorized by statute." (emphasis in original). Thus, when the General Assembly re-enacted § 1-3-240(A) in the 1993 Restructuring Act, providing that "any officer of the county or State" is subject to removal by the Governor for the causes specified, the Supreme Court's reasoning in *Hodges* would warrant the conclusion that § 1-3-240(A) is applicable to the situation referenced in your letter. Moreover, *Hodges* further states that if there is any conflict between the removal provisions contained in the Restructuring Act and any earlier removal provision, "the Restructuring Act would prevail because it was enacted subsequent[ly] ...." 341 S.C. at 89, n 3.

For these reasons, as well as those articulated in our February 6, 2009 opinion, we believe the Governor possesses removal power pursuant to § 1-3-240(A) as more fully described in that Opinion.

Yours very truly,



Henry McMaster

HM/an