



HENRY McMASTER
ATTORNEY GENERAL

January 23, 2009

The Honorable John M. Knotts, Jr.
Senator, District No. 23
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Knotts:

In a letter to this office you questioned whether the State Law Enforcement Division and the State Department of Public Safety are cabinet positions or function as stand-alone agencies.

Your request letter raised also a more fundamental issue related to the removal authority of the Governor with regard to the directors of SLED and the Department of Public Safety. Your question appears to focus upon the issue of the independence of these agencies with regard to the removal authority of the Governor and is broader than the issue of whether these agencies are considered to be in the Governor's cabinet.

Pursuant to S.C. Code Ann. § 23-3-10,

(t)here is created the South Carolina Law Enforcement Division (SLED). The division must be headed by a chief appointed by the Governor with the advice and consent of the Senate and shall hold office until his successor is appointed and qualified. The term of the chief is six years...The chief may only be removed pursuant to the provisions of Section 1-3-240 of the 1976 Code. The agents and officers of the division must be commissioned by the Governor upon the recommendation of the chief...

S.C. Code Ann. §§ 23-6-10 et seq. provide for the establishment of the Department of Public Safety. Section 23-6-40(A) states that

[t]he Governor, with the advice and consent of the Senate, shall appoint the director of the department who shall serve a term of four years. The director may only be removed pursuant to the provisions of Section 1-3-240(C)....

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S.C. Code Ann. § 1-3-240 provides generally for the removal of officers by the Governor. Pursuant to subsection (B)

[a]ny person appointed to a state office by a Governor, either with or without the advice and consent of the Senate, other than those officers enumerated in subsection (C), may be removed from office by the Governor at his discretion by an Executive Order removing the officer.

As indicated by the State Supreme Court in Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000), pursuant to such provision, the Governor generally has the discretionary authority to remove a person appointed to state office by the Governor by executive order. No showing of “cause” is necessary for removal of the officers specified in Section 1-3-240(B).

However, as to the two specific agencies referenced by you - SLED and DPS - an exception is made to the Governor’s general removal authority. Subsection (C) of Section 1-3-240 provides that

[p]ersons appointed to the following offices of the State may be removed by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity...(h) Director of the Department of Public Safety;...(j) Chief of State Law Enforcement Division....

Subsection (C) is, therefore, a limitation of the Governor’s removal authority and general control pursuant to subsection (B). As a result, the directors of SLED and the Department of Public Safety are not included in the Governor’s discretionary removal powers generally and may be removed only for the specified reasons stated by the referenced provision. See: Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997) (affirming Governor Beasley’s removal of Boykin Rose from the office of Director of Department of Public Safety under section 1-3-240(C)). Thus, it was the intent of the General Assembly that certain agencies and the directors thereof, among them SLED and DPS, were to remain more independent or stand-alone from gubernatorial control.

As to your question regarding whether SLED and the Department of Public Safety are cabinet positions, the only provision with which we are familiar which specifically provides for the departments that constitute the Governor’s cabinet is S.C. Code Ann. § 30-4-65. In providing for the applicability of this State’s freedom of information act to the Governor’s cabinet meetings, such provision states in subsection (B) that the term “cabinet” “...means the directors of the departments of the executive branch of state government appointed by the Governor pursuant to the provisions of Section 1-30-10(B)(1)(i)...” Section 1-30-10(B)(1)(i) specifically references “...a director, and in the case of the Department of Commerce, the secretary, who must be appointed by the Governor with the advice and consent of the Senate, subject to removal from office by the Governor pursuant to the provisions of Section 1-3-240....” As referenced above, SLED and the Department of Public

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Safety are included in Section 1-3-240 and, therefore, would be considered cabinet positions, at least for the purposes of the applicability of the -FOIA to a cabinet meeting.

Consistent with the above, in the opinion of this office, the directors of SLED and the Department of Public Safety, while serving as directors of cabinet agencies, may only be removed by the Governor for the reasons specified in Section 1-3-240(C), i.e., malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity. Thus, as compared to other agencies in which the Governor may remove the directors thereof as he sees fit, SLED and DPS are considerably more independent or stand-alone and the directors of these agencies, in managing their agencies are subject only to removal for "cause."

If there are any questions, please advise.

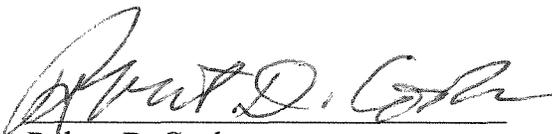
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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