



HENRY McMASTER
ATTORNEY GENERAL

December 21, 2009

The Honorable W. Greg Ryberg
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Ryberg:

We received your letter requesting an opinion of this Office “regarding the commissioners of New Ellenton Commission of Public Works (NECPW).” In your letter, you informed us that the Legislature established the NECPW in 1951 by act 452, which “mandates the service of three commissioners for six-year terms.” In addition, you state you know of no amendments to act 452. However, you understand that commissioners for the NECPW are currently elected and that the NECPW now consists of five commissioners. Thus, you seek an opinion of this Office as to “the validity of the position of the current commissioners of the NECPW.” You also ask that we inform you of “the proper number of commissioners for the NECPW.”

Law/Analysis

As you stated in your letter, the Legislature established the NECPW in 1951 via act 452. 1951 S.C. Acts 854. According to this legislation, the NECPW is to be composed of “three qualified electors of Aiken County who reside or intend to reside in the district.” *Id.* This legislation also specifies that upon the completion of the terms of the initial commissioners, successor commissioners “shall be appointed by the Governor upon the recommendation of a majority of the Aiken County Delegation to the General Assembly.” *Id.* Furthermore, this act states that except for the initial commissioners, each commissioner shall serve a six-year term. *Id.*

We were unable to find any local legislation amending the provisions of act 452. Thus, we would assume that its provisions remains in effect. However, in our research we uncovered general law governing commissioners of public works that may shed some light on the reason the NECPW now has five commissioners who are elected rather than appointed. Section 5-31-210 of the South Carolina Code (2004) states:

At any election for bonds held to meet the costs of acquiring property of the character referred to in § 5-31-610 the elector shall vote for three citizens of the city or town whose terms of office shall be

respectively two, four and six years and until the general election for municipal officers next following the expiration of the short term, and until their successors are elected and qualified. The classification above designated as to the term shall be ascertained by the commissioners after election by lot. At each general election for municipal officers following the expiration of the term of the commissioner holding the short term and at every such election every two years thereafter, one such commissioner shall be elected for a term of six years and until his successor is elected and qualified. The officers so elected and their successors in office shall be known as the commissioners of public works of such municipality and by that name may sue and be sued in any of the courts of this State.

In addition to the three members of the board of commissioners of public works of a municipality authorized above, the governing body of a municipality with a population of fifty thousand persons or less according to the 1980 official United States Census may provide by ordinance for the election of two additional commissioners. The new commissioners must be elected at a special election or at any general election following the enactment of the ordinance in the same manner that the other commissioners are elected. The new member receiving the highest number of votes in that election shall serve for a term of six years and the new member receiving the next highest number of votes in that election shall serve for a term of four years. Their successors must be elected in the election for municipal officers every four or six years thereafter for terms of office of six years. The members elected shall serve until their successors are elected and qualify. Vacancies in these two new positions must be filled in the same manner as other vacancies on the board of commissioners of public works are filled. The provisions of this paragraph for two additional commissioners apply only to boards of commissioners of public works founded after 1920.

According to the legislative history of this provision, it was enacted prior to 1951 and therefore, would have been in effect at the time the Legislature passed act 452 creating the NECPW. "Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." 1-On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000). However, section 5-31-210 does not necessarily conflict with act 452 and is only triggered by public works commission's issuance of bonds. Thus, if the NECPW chose to issue bonds after its establishment, this provision would have become applicable to the NECPW and would require that its commissioners be elected rather than appointed. Moreover, if the municipality associated with the NECPW has a population of fifty thousand or less, the second paragraph of section 5-31-

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210 allows the municipality's governing body to add two additional commissioners by passing an ordinance. We are not aware of whether the Town of New Ellenton passed such an ordinance, but if it did, this would explain why the NECPW now consists of five members rather than three.

In an opinion of this Office, we cannot investigate and determine factual issues. Op. S.C. Atty. Gen., August 27, 2009. Thus, we cannot speak to whether the NECPW chose to issue bonds, which would have triggered the election of its commissioners. In addition, we cannot state whether or not the Town of New Ellenton passed an ordinance adding two additional members to the NECPW. However, if these events occurred, they would explain why the NECPW has five commissioners and why those commissioners are elected. Moreover, these events would make the current method of selection and composition of the NECPW valid.

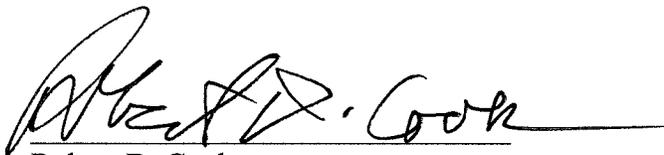
Very truly yours,

Henry McMaster
Attorney General



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