ALAN WILSON
ATTORNEY GENERAL

November 18, 2011

The Honorable Mike Forrester
Member, House of Representatives
287 Creekridge Drive
Spartanburg, SC 29301

Dear Representative Forrester:

In a letter to this office, you ask several questions regarding county veterans' affairs officers. You refer to the opinion of this office dated October 21, 2011, in which we advised, *inter alia*, that the county veterans' affairs officer is vested with the authority to manage personnel in his office, including hiring and discharging personnel, without oversight by the county administrator or council, and is not subject to a county's grievance policy under S.C. Code Ann. §4-9-30(7). You ask for clarification as to whether the county veterans' affairs officer is thus subject to State personnel policies? If we determine the county veterans' affairs officer is not subject to State policies, you ask whether the delegation may then adopt a grievance policy for the veterans' affairs officer? Additionally, you ask whether weighted voting would be required by the delegation to adopt a policy for the county veterans' affairs officer? Lastly, you ask whether the delegation chairman may appoint a personnel committee to hear complaints or issues that may arise concerning the county veterans' affairs officer?

Law/Analysis

By way of background, in the October 21, 2011, opinion we discussed, in pertinent part, our October 27, 1998, opinion wherein we addressed whether the county veterans' affairs officer is a county employee entitled to all rights and privileges thereof as established by county policy; specifically, the county grievance policies as set forth in §4-9-30(7), which is part of the "Home Rule Act" that gave counties certain powers. We concluded in the opinion: ". . . while a county veterans affairs officer may be considered a 'county employee' in a particular set of circumstances, it is likely that a court would conclude that these circumstances would not include classification as a 'county employee' for purposes of Section 4-9-30(7)."

We further advised in the October 21, 2011, opinion, relying on previous opinions of this office interpreting §4-9-30(7), that the county veterans' affairs officer is vested with the authority to manage personnel in his office, including hiring and discharging personnel, without oversight by the county administrator or council. See also Ops. S.C. Atty. Gen., April 29, 2011; September 6, 2005; March 22, 1983. Moreover, we have previously determined: "[s]uch authority would necessarily include assessing the functions and responsibilities of the department . . . to determine how many employees are needed for the orderly conduct of business and what their duties will be. See, *e.g.*, Ops. S.C. Atty. Gen., June 19, 2006 [county clerk of court]; February 21, 1991 [probate judge]. Thus, we concluded that neither the county administrator nor county council may interfere with any of the duties and responsibilities given to

the veterans' affairs officer under State law. See Op. S.C. Atty. Gen., August 8, 1991 [advising that while employees of a magistrate's office are considered "county employees" and are paid by the county, any decision regarding the actual hiring and discharge of these employees is a decision of an individual magistrate pursuant to Section 4-9-30(7)].

Further in this context, we previously advised that an employee under the direction of an elected official or official appointed by an authority outside county government is not entitled to a grievance hearing under §4-9-30(7). For example, in an opinion of this office dated October 26, 1989, we considered whether an employee discharged by a county magistrate is entitled to a public grievance hearing before the entire county council pursuant to §4-9-30(7). In addressing the issue, we noted the "Home Rule Act" designated the powers under each alternative form of county government to include the power:

> . . . to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged by the administrator, elected official or designated department head shall be granted a public hearing before the entire county council if he submits a request in writing to the clerk of the county council within five days of receipt of notice of discharge. The hearing shall be held within fifteen days of receipt of the request. The employee shall be relieved of his duties pending the hearing and in the event a majority of the county council sustains the discharge, it shall be final subject to judicial review, but if a majority of the county council reverses the dismissal the employee shall be reinstated and paid a salary for such time as he was suspended from his employment.
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> Notwithstanding the above provisions of this subsection, any employee who is discharged may elect to submit his grievances concerning his discharge to a county grievance committee in those counties where such committees are operative and in such case his discharge will be reviewed in the manner provided for in the rules of that committee retaining all appellate rights therein provided for. The salary of those officials elected by the people may be increased but shall not be reduced during the terms for which they are elected, except that salary for members of council and supervisors under the council-supervisor form of government shall be set as hereinafter provided....

However, as discussed by the South Carolina Supreme Court in Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988) - which addressed the relationship between the Aiken County Sheriff's Office and Aiken County Council in this regard - we noted the Heath Court explained that §4-9-30(7) was amended effective February 24, 1988, "to clarify references relating to county grievance procedures." See Heath, 368 S.E.2d at 905 n.2.

The 1988 amendment, which rewrote §4-9-30(7), now states:

> . . . to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. Any employee discharged shall follow the grievance procedures as established by county council in those counties where the grievance procedures are operative, retaining all appellate rights provided for in the procedures. In those counties where a grievance procedure is not established, a county employee discharged by the chief administrative officer or designated department head must be granted a public hearing before the entire county council within five days of receipt of notice of discharge. The hearing must be held within fifteen days of receipt of the request. The employee must be relieved of his duties pending the hearing and if a majority of the county council sustains the discharge, it is final subject to judicial review, but if a majority of the county council reverses the dismissal, the employee must be reinstated and paid a salary for the time he was suspended from his employment.
>
> The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, except that salaries for members of council and supervisors under the council-supervisor form of government must be set as provided in this chapter....

We also referred to a September 14, 1988, opinion of this office discussing "whether [Heath] applied to Section 4-9-30(7) of the Code as it existed prior to the amendment to such provision as enacted this year or does it affect the amended provision." Based on our review of the amendment, we concluded:

> . . . it appears that it was the intention of the General Assembly that grievance procedures not be provided for employees discharged by an elected official as referenced in Section 4-9-30(7). As stated, the legislation specifically refers to a grievance procedure for employees discharged by a chief administrative officer or designated department head in counties which do not have a grievance procedure. To read such statute as providing a grievance procedure for employees of elected officials in counties which do have a grievance procedure but not for such employees in counties which do not have such a procedure would be discriminatory. Moreover, the "employee discharged" who is given grievance rights appears from a careful reading of the entire provision to relate to those employees "in the county departments in which the employment authority is vested in the county government."

> Therefore, it is the opinion of this Office that the recent decision of the State Supreme Court in Heath v. County of Aiken, is solely applicable to Section 4-9-30(7) as it read prior to its being amended this year by the General Assembly. However, with the amendment, no employee of an elected official, such as a sheriff, who is discharged by such official, is entitled to a grievance hearing under Section 4-9-30(7).

Interpreting the legislative intent of the 1988 amendment, we concluded in the October 26, 1989, opinion that, because the employee of the county magistrate was employed under the direction of an official appointed by an authority outside county government, the employee did not appear to be entitled to a grievance hearing pursuant under §4-9-30(7). See also Op. S.C. Atty. Gen., November 23, 1993 [advising that the employment and discharge of jailers employed under the direction of an elected official are removed from the provisions of the county's grievance procedure act]. Upon further review of the cited authority, we find no reason to alter the opinion of this office in this regard as it would be applied to the county veterans' affairs officer, an official appointed by an authority outside county government. See Op. S.C. Atty. Gen., October 21, 2011.

Further relevant is the decision of the court in Amos-Goodwin v. Charleston County Council *et al.*, 161 F.3d 1 (4th Cir. 1998) (1998 WL 610650), which addressed a civil rights action under 42 U.S.C. §1983 by eight Charleston County probate court clerks of court against Charleston County and its Council, alleging politically-motivated termination. The federal district court dismissed the claims against the County defendants on the grounds that, because the plaintiffs were employees of the probate judge and not of the County, the County defendants could not have wrongfully terminated them. The Fourth Circuit affirmed the district court, relying on §4-9-30(7) for the proposition that the County defendants had no authority over the personnel actions of the probate court employees. The Court held that, because the plaintiffs were employees of an elected official, the probate judge, they were not entitled to a grievance hearing under §4-9-30(7). Id., 1998 WL 610650 at 1.

Although we have advised that the county veterans' affairs officer is not a "county employee" for purposes of county grievance procedures set out in §4-9-30(7), this office has consistently opined that the county veterans' affairs officer remains a county officer rather than a state officer. See, *e.g.*, Ops. S.C. Atty. Gen., October 21, 2011; October 27, 1998; April 11, 1984; February 3, 1972; cf. Ops. S.C. Atty. Gen., August 2, 2010 [observing that while serving as the county veterans' affairs officer could be considered an office for purposes of dual office holding, §8-1-130 specifically exempts the veterans' affairs officer from prohibition on dual office holding found in art. XVII, §1A of the South Carolina Constitution]; May 9, 1989 [same]. We best explained our reasoning for this conclusion in an opinion of the office dated March 1, 1966. There, we analyzed the law concerning the master-servant relationship, and discussed the manner in which county service officers (now referred to as county veterans' affairs officers) were appointed and who exercised control over the officers. The opinion stated that:

> [a]lthough the State Service Officer makes the appointments of the various county service officers, he has no power to select them. The County delegations make the selections and the State Service Officer appoints the persons they select. Funds for the payment of salaries of service officers are appropriated by the State, forwarded to the county treasurers who actually pay out the funds. County Service Officers are subject to removal at any time by a majority of the

> county delegations from the respective counties. The State Service Officer has no control over the County Service Officers except to require reports from time to time. He has no authority to tell them what to do or how to perform their duties. Thus, the authority for selecting and removing County Service Officers rests with a majority of the county delegations of the various counties (including the Senator for selection). Apparently, the county delegations have the right of control of the Service Officers' conduct. The State Service Officer has none and exercise none except to require reports from time to time. . . . Based on the foregoing, it appears that County Service Officers are county officers. See 1960-61 Opinions, Attorney General, Opinion No. 1099, p.171; 56 CJS Master & Servant, § 3(5).

See Ops. S.C. Atty. Gen., October 21, 2011 [stating the county veterans' affairs officer is accountable to the delegation that selects him in accordance with §25-11-40 (B)]; April 11, 1984 [advising that the county veterans' affairs officer is not under the control of the State Director]; see also Ops. S.C. Atty. Gen., December 2, 2009; June 13, 2008; April 11, 2001; October 27, 1998; March 29, 1971.

It is the opinion of this office, therefore, that although the county veterans' affairs officer is not subject to a county's grievance policy, and he is accountable to the delegation that selects him in accordance with §25-11-40 (B), the county veterans' affairs officer remains a county officer rather than a state officer. He thus would not be subject to State personnel policies in this regard. See §§8-11-210 *et seq.* [establishing a State Personnel Division under the State Budget and Control Board . . . "to administer a comprehensive system of personnel administration responsive to the needs of the employees and agencies and essential to the efficient operation of State Government. It shall be applicable to all State agencies, departments, institutions, boards, commissions and authorities, except as may hereinafter be exempted"]. In an opinion dated September 26, 2011, we addressed the effect of TERI employment and dismissal rights of school district employees, noting that §§8-17-310 *et seq.* [the State Employee Grievance Procedure Act], by its very title, only covers state employees. We advised that while school district employees are not covered under the State Grievance Act, the General Assembly has separately provided school districts the power to employ and dismiss certain employees, and the power to adopt policies necessary and proper in furtherance of this policy. Moreover, §8-17-320(1) defines "agency" for purposes of the State Grievance Act as "a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina. Special purpose districts, political subdivisions, and other units of local government are excluded from this definition." See Op. S.C. Atty. Gen., February 19, 1988 [advising that employees of a special purpose district would not be governed by the State Grievance Act, since the definition of "agency" specifically excludes "special purpose districts, and other units of local government . . ."].

We also cite to an opinion of this office dated March 31, 1987, in which we discussed the council-supervisor form of county government provided for in §4-9-410 *et seq.*, and considered whether the county personnel policies enumerated in §4-9-30(7) were applicable to the county supervisor. Specifically, the issue concerned paying the outgoing county supervisor for vacation pay, and whether such would be permitted or prohibited by state law or local ordinance, or perhaps left to the discretion of the county council. We first cited to previous opinions of this office which concluded that elected officials were not entitled to annual or sick leave. We stated that, because the county supervisor is directly elected by the people of the county, the county personnel ordinances would not be applicable to the county

supervisor. We further concluded: "[b]ecause the county supervisor is not a state employee, Section 8-11-620 of the Code, concerning payment for unused annual leave to state employees upon termination of state employment, would not be applicable." cf. Op. S.C. Atty. Gen., June 11, 1979 [advising that since the county treasurer is not a "permanent full-time State employee," the provisions of §8-11-620 relating to payment of annual leave are not applicable to the county treasurer].

In your letter, you refer to the opinion of this office dated April 11, 2001, in which we discussed whether the county or the delegation would have the authority to extend the period for paid military leave for the county veterans' affairs officer beyond the forty-five days authorized by §8-7-90. In addressing the question, we referred to the prior opinion of this office dated October 27, 1998. As noted above, in that opinion we advised that the county veterans' affairs officer, although considered a county officer, serves at the pleasure of the delegation. The opinion noted: "the power to appoint would include not only how long the officer serves, but how he serves, as well." We advised that while the county veterans' affairs officer may be considered a "county employee" in a particular set of circumstances, it is likely that a court would conclude these circumstances do not include classification as a "county employee" for purposes of §4-9-30(7)'s personnel policies and grievance procedure. We concluded in the 2001 opinion that any attempt to extend the veterans' affairs officer's paid military leave beyond forty-five days would be inconsistent with §8-7-90, which we observed applied to "officers and employees of this State or a political subdivision." Specifically, you note that we stated in the opinion: "the [1998] opinion does suggest that the delegation would normally control the personnel policy applicable to the veterans' affairs officer . . . [h]owever, that personnel policy could not contravene state law." The 1998 opinion addressed the general authority of the delegation to remove the county veterans' affairs officer for cause pursuant to §25-11-40 (B). To the extent the above *dicta* is inconsistent with previously cited authority, we believe it should be disregarded.

Addressing your remaining questions, we would refer to the February 19, 1998, opinion of this office which discussed the establishment of a grievance procedure to be used by a special purpose district in Greenville. As noted above, the employees of the "special purpose district" were not governed by the State Grievance Act. We also determined there was no evidence the special purpose district employees were county employees subject to §4-9-30(7)'s grievance procedures. Relevant to the issues presented in your letter, we noted in the opinion that "administrative agencies, which are creatures of statutes, have no common-law or inherent jurisdiction or powers; therefore, they have only such powers as have been granted to or conferred upon them by statute, expressly or by implication." Upon review of the enabling legislation, it was clear that although the special purpose district was granted express authority to hire certain employees and to fix their compensation; the legislation was silent concerning a grievance procedure. In the absence of express authorization in the enabling legislation for a grievance procedure for its employees, we concluded the special purpose district had no power or jurisdiction over a grievance procedure.

In another opinion of this office dated December 2, 2009, we discussed the authority to impose sanctions for misbehavior and poor performance by the county veterans' affairs officer; specifically, whether the Sumter County Administrator had authority to suspend the Sumter County veterans' affairs officer pending the disposition of criminal charges. We concluded that, because the Sumter County Delegation may remove the veterans' affairs officer for cause pursuant to §25-11-40 (B), the Sumter

County Delegation would also have the authority to suspend the county veterans' affairs officer.[1] We further stated that although a court would likely find that the appropriate legislative delegation has authority to suspend a county veterans' affairs officer, there was no authority to support the contention that a county administrator had such authority, because (1) the General Assembly did not give any authority to county administrators in §25-11-40, and (2) any authority to suspend a county veterans' affairs officer was incidental to the power to remove such officers for which county administrators are given no such authority.

It is relevant to note that the supreme legislative power of the State is vested in the General Assembly. Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723, 725 (1949); see also S.C. Const. art. III, §1. In the December 2, 2009, opinion we advised that for the Sumter County Delegation to delegate any authority it may have to the Sumter County Administrator, the General Assembly as a whole must act; the Sumter County Delegation may not alone delegate any authority to the Sumter County Administrator. In reaching this conclusion, we cited to a prior opinion of this office dated June 3, 2005, which explained that:

> [a] county legislative delegation possesses no inherent powers and cannot exercise sovereign authority, absent a delegation of authority to it by the General Assembly. State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972). In addition, a legislative delegation is not permitted to execute or enforce a law. See, Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 558 S.E.2d 511, 514 (2002). The members of a county delegation may not participate in a determination as legislators because they may only exercise legislative power as members of the General Assembly. See, Gunter v. Blanton, 259 S.C. 436, 441, 192 S.E.2d 473 (1972). Furthermore, serious constitutional questions arise when county delegations are empowered with executive or judicial functions. See, Op. Atty. Gen., July 11, 1983.

See also Ops. S.C. Atty. Gen., February 6, 2006 [advising that the Georgetown County Delegation lacked legislative authority to grant the Georgetown County Board of Elections and Registrations authority to elect officers and adopt new by-laws]; November 8, 1993 [advising that although the Spartanburg County Delegation had authority to recommend individuals to the Governor for appointment to the Commission for Higher Education, the statutes did not grant the power with respect to removal of the Commission members].

The issue discussed in the June 3, 2005, opinion was, if a failed redistricting plan was resubmitted, could the Edgefield County Delegation vote on it at a different location or must the plan go back to the General Assembly. The proposed redistricting plan had failed to pass the Edgefield County Delegation due to a tie vote. This office advised that a county redistricting plan must be enacted on the floor of the General Assembly. We emphasized that:

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[1]Although unrelated to your specific questions, we cautioned in the opinion that a court, based on the South Carolina Supreme Court's decision in Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625, 629 (1997) [determining the Governor did not hold an inherent power to suspend as an incident of the statutory power of removal], may find the power of a county legislative delegation to remove the county veterans' affairs officer for cause did not imply the inherent power to suspend him.

> [w]ith respect to the general issue regarding the power of a county legislative delegation, the aforementioned law indicates that county delegations are limited in their authority. A grant of authority which would provide county delegations legislative power outside of their constitutional role as members of the General Assembly presents issues as to the constitutionality of the delegation's actions. Likewise, a legislative delegation may not exercise executive or judicial powers. Therefore, we concur . . . that a redistricting plan resubmitted to a county delegation must go back to the General Assembly floor for voting.

In the July 11, 1983, opinion, cited above, we addressed whether the Horry County Delegation could create a "Blue Ribbon Committee" concerning education matters in Horry County, and then empower that Committee to exercise certain sovereign powers with respect to education. Relying upon the previously cited authority, we advised that the Horry County Delegation did not have the authority to exercise such powers. We stated: "[p]ut simply, '[D]elegations are bodies and agencies to carry into effect the fully enacted law.' State v. Lewis, 181 S.C. 101, 186 S.E. 625, 635 (1936)." We further noted that in South Carolina State Highway Dept. v. Harbin, 266 S.C. 585, 86 S.E.2d 466, 470 (1955), cited in Watkins, supra, the South Carolina Supreme Court enunciated the characteristics that a statute must possess for there to be a valid delegation of power by the General Assembly. The Court said, in part:

> [t]he question of delegation of legislative power has confronted the courts with many perplexing problems, particularly during recent years when the complexities of government have been constantly on the increase. It is well settled that while the legislature may not delegate its power to make laws, enacting a law complete in itself, it may authorize an administrative agency or board 'to fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose [Citations omitted] . . . 'However, it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration.' [Citations omitted].

We concluded in the opinion that in the absence of authority by the General Assembly expressly empowering the Horry County Delegation to create the type of "Blue Ribbon Committee" considered, such authority did not exist.

In another opinion of this office dated February 14, 2006, the issue was what "governing authority" did the Georgetown County Delegation have with relation to the Georgetown County Board of Elections and Registrations that was reappointed by the Governor upon the recommendation of the Georgetown County Delegation, and whether it had the authority to make recommendations and suggestions to the Board relating to Board operations, procedures and bylaws. We stated that, generally, to determine what authority, if any, the Georgetown County Delegation had in regard to the Board, we must examine the statutes relative to the Board. We stated:

> [a] board is typically considered to be an autonomous entity subject by statute to specific grants or restrictions of authority in carrying out its specific purposes. Op. New Mex. Atty. Gen. dated September 28, 1987. Act No. 591 in providing for the manner of appointment of the members of the Board does not comment on your question regarding the authority of the [D]elegation as to the Board. Therefore, there is no specific authority giving the [D]elegation authority with respect to the operations, procedures and bylaws of the Board. As a result, in my opinion, there is no "governing authority" on behalf of the [D]elegation with regard to the Board.

We note an opinion of this office dated February 19, 1974, in which we addressed whether or not the Charleston County Delegation could establish a committee to investigate the activities of the Charleston County Council. We stated:

> [w]hile the Charleston County Legislative Delegation, acting alone, is without authority to establish such a committee, one could be created by either a concurrent or a joint legislative resolution of the General Assembly. See, *e.g.*, 72 AM.JUR.2d States, etc., §51 at 450. The latter possesses the power to investigate any subject with respect to which it may desire information in aid of the proper discharge of its function to make or unmake laws; 81 C.J.S. States §43 at 960; 73 AM.JUR.2d States, etc. §§50 and 53 at 448 end 452; and private citizens, as well as members of the General Assembly may serve on an investigating committee. 81 C.J.S. States §42 at 960.

Additionally, we advise that a delegation of power to county legislative delegations in certain circumstances creates a risk of violating the separation of powers clause of the South Carolina Constitution due to an unconstitutional delegation of powers. We concluded in the July 11, 1983, opinion [discussing the creation of the "Blue Ribbon Committee"] that such "[a] delegation then, of any executive or judicial functions to a county legislative delegation would likely violate the separation of powers clause of the [South Carolina] Constitution." We further advised that "a delegation of legislative authority to a county delegation may well be unconstitutional." See S.C. Const. article I, §8 ["In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other"].

In Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972), which considered the constitutionality of a statute requiring a county legislative delegation to approve or disapprove any tax increased adopted by the board of trustees for the county school district, the South Carolina Supreme Court acknowledged the General Assembly has the power to impose taxes and it may delegate such power to the school district under Article X, §5 of the South Carolina Constitution. Id., 192 S.E.2d at 474. However, by giving the county delegation the power to approve any tax increases, the Court concluded this "constituted the County Legislative Delegation a committee of the Legislature to determine not only when a tax increase was proper but also to take such action with regard to the increase as that committee might deem proper." Id., 192 S.E.2d at 475. Therefore, the Court held:

> . . .[t]he Act does not and can not authorize the members of the delegation to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly.
>
> To authorize them to participate as corporate authorities of the school district, as the Act attempts to do, clearly assigns to them a dual role in violation of the separation of powers clause of the Constitution.

Id.

Similarly, in Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980), which involved a constitutional challenge to a statute that required the approval of a county's legislative delegation for millage increases proposed by the county's school board, the South Carolina Supreme Court, relying on Gunter, stated:

> [a]s a general rule, the Legislature may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators. The Legislature may properly engage in the discharge of such functions to the extent only that their performance is reasonably incidental to the full and effective exercise of its legislative powers. As the functions of the Legislative Delegation in this instance are not incidental to or comprehended within the scope of legislative duties, the separation of powers doctrine as provided by Article I, section 8 has clearly been violated.

Id., 262 S.E.2d at 17.

As further referenced in the July 11, 1983, opinion, in Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257, 258 (1938), the South Carolina Supreme Court enjoined certain actions of the Greenville County Delegation, explaining that the only permissible exercise of legislative functions by a county delegation is "the performance of . . . duties . . . in efficient enforcement and execution of a complete law." The Court concluded that "nothing can be added to, or taken away from the act after it leaves the lawmaking body . . . [citations omitted]," and "no county legislative delegation can be clothed with power to enact laws during vacation." Id.[2]

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[2]Of course, certain delegations of power to county legislative delegations have traditionally been held to be constitutional. For example, we have advised that election and appointment to office have been held to be a valid delegation of power to county legislative delegations. See Ops. S.C. Atty. Gen., February 6, 2006; July 11, 1983. In State v. Bowden, 92 S.C. 393, 74 S.E. 866, 870 (1912), quoted in Lewis, supra, the South Carolina Supreme Court said:

> [t]he truth is that the power of appointing or electing to office does not necessarily and ordinarily belong to either the legislative, the executive or the judicial department. It is commonly exercised by the people, but the legislature may, as the law making power when not restrained by the Constitution provide for its exercise by either department of the government, or by any person or association of persons whom it may choose to designate for that purpose. It is

Finally, we note that in an opinion dated June 13, 2008, we addressed the procedure the county legislative delegation should follow in determining whether or not to remove the county veterans' affairs officer for cause, because §25-11-40 (B) does not provide guidance. To answer the question, we considered an opinion of this office dated July 1, 1999, which addressed the removal of a member of a county planning committee, where the statutes governing planning commissions did not specify the procedure for removal. In that opinion, we deferred "to the County Council and the County Attorney to determine the specific procedures to be followed in this regard." Nonetheless, we also referred to 67 C.J.S. Officers §48 (1978), which provides as follows:

> [w]here an officer or public employee can be removed only for cause either for the reason that he holds for a term fixed by law, or during good behavior, or that a constitution or statute so provides, it is generally held that the power granted is not arbitrary to be exercised at pleasure, and the power can be exercised only after notice and opportunity to be heard.

Additionally, we noted two South Carolina Supreme Court cases indicating that state courts are likely to require notice and an opportunity to be heard before a public official may be removed for cause. See State *ex rel.* Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948); Walker v. Grice, 162 S.C. 29, 159 S.E. 914 (1931). In Walker, the Court said that "[a] removal for cause operates as a limitation upon the power to remove, and, in our opinion, the party to be removed, or attempted to be removed, is entitled to a hearing as to the charge that he has failed to perform his duty." Id., 159 S.E. at 916.

We thus concluded in the June 13, 2008, opinion that:

> [b]ecause the house and senate members representing particular counties are charged with the authority to remove veterans' affairs officers, we defer to these individuals to develop a procedure. However, in accordance with our prior opinions, because veterans' affairs officers may only be removed for cause, we believe at a minimum they must receive notice and an opportunity to be heard prior to their removal. [Emphasis added].

> an executive function when the law has committed it to the executive, a legislative function when the law has committed it to the legislature, and a judicial function . . . when the law has committed it to . . . the judiciary.

In Lewis, the Court held that an act empowering a county legislative delegation to elect district Highway Commissioners was constitutional since the act was complete, and action by the delegation "was not predicated upon the determination of any fact . . . by the delegation as a prerequisite to such consent . . . and substance of the statute . . ." Lewis, 186 S.E. at 635; see also Benjamin v. Housing Authority, 198 S.C. 79, 15 S.E.2d 737 (1941).

Conclusion

The county veterans' affairs officer, an official appointed by an authority outside county government, is not a "county employee" for purposes of a county's grievance policies pursuant to §4-9-30(7). The county veterans' affairs officer is further vested with the authority to manage personnel in his office, including hiring and discharging personnel, without oversight by the county administrator or council. Consistent with previous opinions of this office, however, the county veterans' affairs officer remains a county officer rather than a state officer. The county veterans' affairs officer, therefore, would not be subject to the State's personnel policies in this regard. Further, based on our review of the law governing the county veterans' affairs officer, see §§25-11-10 *et seq.*, we are of the opinion there is no legislative authority empowering the delegation to adopt grievance policies applicable to the veterans' affairs officer, and that any attempt by the delegation to do so may be deemed void by a court.[3] As explained above, we further advise that the granting to the delegation of such authority may also raise constitutional issues. Finally, it would appear the delegation chairman may appoint a committee attendant to the authority of the delegation's to consider whether or not to remove the county veterans' affairs officer for cause and to develop other procedures to execute such authority, in accordance with §25-11-40 (B). However, absent express legislative authorization, the delegation would not be empowered to designate a "personnel committee" to determine personnel matters, specifically, grievances, regarding the county veterans' affairs officer. This is our best judgment as to the construction of the statutes and authority, but we advise it might be prudent to obtain a declaratory judgment with respect to the role of the delegation and the county veterans' affairs officer in order to resolve this particular matter with finality.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

[3]Because we have determined the delegation has no express authority to adopt personnel policies applicable to the veterans' affairs officer, we did not address whether or not weighted voting by the delegation is required to adopt such policies.