



Reg. 4995

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 28, 1995

G. Edward Welmaker, Esquire
Pickens County Attorney
Post Office Box 899
Pickens, South Carolina 29671

RE: Informal Opinion

Dear Mr. Welmaker:

By your letter dated May 15, 1995 (which I received on June 20), you had inquired as to proper procedures for Pickens County Council to follow in two circumstances. We have searched our files of previously issued opinions and have found opinions which appear to be responsive to both of your inquiries.

The first inquiry involves the Freedom of Information Act. You advised that frequently the County Council is called upon to meet with other governmental and quasi-governmental agencies, such as the local technical college. The purpose of such meetings would be to review budget requests. You asked whether such session would constitute a public meeting for which notice is required. You further advised that no action or votes would be taken, as the meeting would be merely to gather information from the other board as to its budgetary needs. In response I am enclosing copies of Ops. Att'y Gen. Nos. 83-100 and 83-55. Based on these opinions, it would appear that the meetings which you have described would be subject to the notice requirements of the Freedom of Information Act.

The second inquiry relates to dual office holding. The local Council of Governments provides for a County Council member to be representative on its governing board. In addition, County Council can appoint representatives from the citizens of the particular county. Provisions are made for minority representation. The question has been asked if a designated second County Council member, in addition to the one designated

G. Edward Welmaker, Esquire

Page 2

June 28, 1995

as the elected official, can serve as the appointed representative. Thus, the "citizen member" would have the dual capacity as a member of the County Council. You asked whether the elected member of County Council, who would serve as the "citizen member," would have the same exemption from dual office holding as the member of County Council would have. I am enclosing copies of Ops. Att'y Gen. dated May 6, 1992; November 4, 1991; February 7, 1984; and February 1, 1973, to the effect that Article VII, §15 and Article VIII, §13(C) of the state Constitution exempt members of regional councils of governments, who are elected or appointed officials or employees of government, from the dual office holding prohibitions of the South Carolina Constitution.

Of some concern to me in the situation you have described would be the decision in Bradley v. City Council of Greenville, 212 S.C. 389, 46 S.E.2d 291 (1948). Therein, the court stated that in the absence of a constitutional or statutory provision so authorizing, it would be "contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." 212 S.C. at 397. While I believe the state constitution anticipates that elected or appointed officials will serve on the boards of regional councils of governments (as would be the circumstance as to the County Council member already appointed and serving), I have some concerns as to whether appointing a County Council member for the "citizen member" position would be the type of self-appointment cautioned against in the Bradley decision.

I trust that the foregoing and the enclosures will satisfactorily respond to your inquiry. Please feel free to contact me if you should need additional assistance or clarification.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures