

The State of South Carolina

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Office of the Attorney General

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October 21, 1992

The Honorable Thomas N. Rhoad
Member, House of Representatives
RFD 2, Box 108A
Branchville, South Carolina 29432

Dear Representative Rhoad:

You had requested the opinion of this Office as to the appointment process to be followed in appointing members of the Bamberg County Mental Retardation Board, the actual question being whether Bamberg County Council or the Bamberg County Legislative Delegation would have authority to appoint the members of the Board.

Act No. 381 of 1992 amended S.C. Code Ann. § 44-20-375 as to appointment of members of county mental retardation boards. That statute, which also required county councils to adopt an ordinance prior to July 1, 1992, creating mental retardation boards, now provides in relevant part:

... the process for appointing board members which existed on January 1, 1991, must be preserved in the ordinance. However, where the county legislative delegation or county council recommends board members to the appointing authority, the delegation may transfer its authority to recommend or the council may transfer its authority to the delegation. If there is a transfer, preservation of the authority to recommend existing on January 1, 1991, is not required, and the new recommending authority must be contained in the ordinance.

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We are advised that the Bamberg County Board members have been appointed by the Governor upon recommendation of the legislative delegation. We are further advised that no transfer of authority from the delegation has taken place, and apparently Bamberg County Council desires to make these appointments.¹

Section 44-20-375, as it existed prior to the 1992 amendment, was the subject of an opinion of this Office dated September 17, 1991, a copy of which is enclosed. The 1992 amendment clarifies a question raised in that opinion, so that the meaning of "appointing authority" is better understood. The plain language of § 44-20-375, which must be applied literally in the absence of ambiguity, Infinger v. Edwards, 268 S.C. 375, 234 S.E.2d 214 (1977), clearly requires that the process used to appoint board members, which existed on January 1, 1991, be preserved in the ordinance which the county council must have adopted by July 1, 1992. The process which existed in Bamberg County on January 1, 1991, was appointment by the Governor upon recommendation of the legislative delegation; because the delegation has not transferred the recommending authority to Bamberg County Council, § 44-20-375 requires the delegation to retain the process of appointing members to the Bamberg County Mental Retardation Board.

Based on the foregoing, it is the opinion of this Office that § 44-20-375 requires the Bamberg County Legislative Delegation to continue to recommend for appointment (and the Governor to appoint) members of the Bamberg County Mental Retardation Board, until such time as the Delegation should transfer its appointment authority to Bamberg County Council.

¹This Office assumes the stated facts to be correct for purposes of this opinion; we have no authority to determine facts, see Op. Atty. Gen. dated December 12, 1983, or to undertake an investigation. Nor have we consulted with the Bamberg County Attorney on this matter.

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With kindest regards, I am

Sincerely,

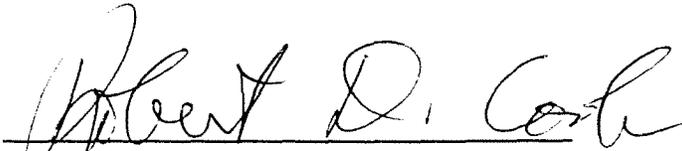
Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

cc: Doyet A. Early, III, Esquire
Bamberg County Attorney

Evert Comer, Jr., Esquire