

## The State of South Carolina



## Office of the Attorney General

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November 9, 1989

Mr. Thomas S. Linton  
Code Commissioner and Director  
Legislative Council of the General Assembly  
Post Office Box 11489  
Columbia, South Carolina 29211

Dear Mr. Linton:

You have requested the opinion of this Office as to whether, when a chairman of a standing committee of the Senate or House of Representatives or his designee is made a member of a board or similar organization, the designee must be a committee member. In the alternative, you ask whether the designee may be any member of the chairman's legislative body.

At the outset, it is helpful to note that state law provides at least three different scenarios whereby someone other than a committee chairman might actually serve on a board or similar organization in his stead as an ex officio member. One scenario involves such statutes as those which call for ex officio service of a chairman of a standing committee on a specific board. See, for examples, Sections 2-15-10 of the Code of Laws of South Carolina (chairmen of Senate and House Judiciary Committees, chairmen of Senate Finance Committee and House Ways and Means Committee serve ex officio on the Legislative Audit Council); 59-7-10 (chairmen of Senate Finance Committee, Senate Education Committee, House Ways and Means Committee, Education Committee of the House serve ex officio on the South Carolina Educational Television Commission); and 59-48-20 (chairmen of Joint Legislative Committee to Study the State's Public Education System, Senate Education Committee, House Education and Public Works Committee serve ex officio on the board of the Special School of Science and Mathematics).

A second scenario would have chairmen of standing committees or their designees serve ex officio on various boards or commissions. See, for examples, Section 46-5-10 of the Code (chairmen of House and Senate Agriculture and Natural Resources Committee "or their

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designees" are to serve ex officio on the Agriculture Commission); Section 55-5-30 (chairmen of House Education and Public Works Committee and Senate Transportation Committee "or their designees" serve ex officio on the Aeronautics Commission); and 50-3-10 (chairman of Senate Fish, Game and Forestry Committee and chairman of House Agriculture and Natural Resources Committee "or his designee" serve ex officio on the Wildlife and Marine Resources Commission).

Finally, a number of statutes provide for ex officio membership of a specified committee chairman or his designee from that committee on a board or commission. See, for examples, Sections 59-117-10, 59-121-10, 59-123-40, 59-125-20, 59-127-20C, and 59-130-10 of the Code. A number of these statutes formerly made the chairman of the committee the ex officio member; it appears significant that these laws were amended to state specifically that the chairman of the committee "or his designee from that committee" would serve ex officio on the given board.

In light of the foregoing, it appears that a designee of a committee chairman might be selected in any of several ways; depending on the statute calling for ex officio service, a greater or lesser restriction as to the possible choices of the designee may exist. For example, in the first scenario described above, it is necessary to consider Section 2-1-90 of the Code, which provides:

Wherever a statute provides for the chairman of a standing committee of the General Assembly to be a member of a board or commission, ex officio, the members of the standing committee may elect another member of the committee to serve in lieu of the chairman.

With respect to legislative committee chairmen who were ex officio members of the South Carolina Educational Television Commission, this Office so opined as to the meaning of Section 2-1-90:

Where the terms of a statute are plain and unambiguous, they must be applied according to their literal meaning. State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983). Thus, based on a literal reading of the statute, we would advise that Commission members who are ex officio by virtue of chairing a specified legislative committee could not appoint another committee member to attend in his place; however, the committee itself might elect another member to serve in the chairman's place.

Op. Atty. Gen. No. 84-54 (emphasis in original). The plain language of Section 2-1-90 states that when a chairman of a standing commit-

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tee is named as an ex officio member of a board or commission, the committee may elect another of its members to serve in his place. In such an instance, Section 2-1-90 appears to require that such a designee of the committee be a member of the committee.

The plain language of statutes such as those cited in the third scenario described above likewise require that the designee of the committee chairman be "from that committee." In the absence of ambiguity, such plain language must be applied literally. McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948). Thus, in instances described in the third scenario, the designee would be a member of the chairman's committee.

The second scenario described above appears to permit more discretion in the chairman's determination of a designee. If the General Assembly intended that all designees of committee chairmen be from the committee of the chairman, arguably it was unnecessary to add the phrase "from that committee" to the statutes cited in the third scenario. Such would be useless legislation or a futile act which the legislature is presumed to avoid. Fulghum v. Bleakley, 177 S.C. 286, 181 S.E. 30 (1935). Thus, absence of such restrictive language in statutes such as those cited in the second scenario would appear to give the chairman greater discretion in selecting his designee. To conclude otherwise would ignore the distinguishing phrase "from that committee" in other statutes. The statutes which would fit into this scenario do not specify a limitation on the source of the designee of the committee chairman.

To summarize the foregoing, this Office advises that whether the designee of a chairman of a standing committee of the General Assembly must be named from the membership of the chairman's committee depends largely on the applicable statute creating the ex officio membership of the committee chairman on a board or commission, council, or other body.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

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