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January 27, 1988

The Honorable Herbert Kirsh  
Member, House of Representatives  
532-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Kirsh:

By your letter of January 6, 1988, you have asked about the proper method of increasing the number of members of a county board of social services.

The applicable statute concerning appointment of members of county boards of social services is Section 43-3-10, Code of Laws of South Carolina (1976), as follows:

There is created in each county of the State a county department of social services, referred to in Chapters 1, 3, 5, 7, 9, 19 and 23 as the county department, and in each county a county board of social services, referred to in Chapters 1, 3, 5, 7, 9, 19 and 23 as the county board, to be composed of not less than three nor more than nine members. The members shall be appointed by the Governor upon the recommendation of a majority, including the Senator, of the county legislative delegation. The terms of the members shall be for three years and until their successors have been appointed and qualify. In case of a vacancy caused by death, removal, resignation or otherwise, such vacancy shall be filled as provided in this section, but only for the unexpired term.

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You have indicated your belief that this statute is self-executing, that a county legislative delegation may increase the number of board members on a county board of social services to a number up to and including nine without further action of the General Assembly. We concur with your conclusion.

A constitutional provision is deemed to be self-executing "when no legislation is necessary to give effect to it." Becker v. Atlantic Coast Line Railway Co., 128 S.C. 131, 138, 121 S.E. 476 (1923), or "if it supplies sufficient rule by which right may be enjoyed or duty imposed enforced." Black's Law Dictionary 1220 (5th Ed. 1979). In a similar fashion, the General Assembly has allowed a county legislative delegation the discretion to select an appropriate number of members, from three to nine, to govern the county board of social services without further action on the part of the General Assembly. Presumably, the legislative delegation would be in the best position to ascertain how many individuals would be needed to effectively carry out the mission of the South Carolina Department of Social Services at the county level. See Section 43-3-110 of the Code (county board required to make annual report to the delegation).

The role of the Governor in this appointment process is ministerial; he would be required to appoint those individuals whose names have been submitted to him by a county legislative delegation. As stated in Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936), construing an appointment statute similar to Section 43-3-10 of the Code:

The law imposes the positive duty upon the Governor to make the appointment at a time and in a manner or upon conditions which are specifically designated. It is a simple definite duty arising under conditions admitted or proved to exist, and it leaves nothing to his discretion. It is ministerial.

Id., 180 S.C. at 47-48. Thus, the Governor's role would be limited to appointment of those individuals as named by the delegation; the Governor would not be the decision-maker as to the number of individuals to be appointed.

Based on the foregoing, it is our opinion, concurring with your views, that the county legislative delegation would determine, in its county, the appropriate number of members to serve on a county board of social services. If the delegation feels

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that an increase in the number of board members is needed, the delegation would recommend the appropriate number of names to the Governor, who would then make the additional appointments. No further action by the General Assembly would be required. I have consulted with counsel for the State Department of Social Services, who is in agreement with the foregoing and who further advises that the foregoing reflects the current practice in the various counties.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

cc: The Honorable James L. Solomon, Jr.  
Bruce Holland, Esquire