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December 28, 1988

Jack M. Scoville, Jr., Esquire
Georgetown County Attorney
104 Screven Street
Post Office Box 1250
Georgetown, SC 29442

RE: Georgetown County Higher Education Commission

Dear Jack:

You have requested that this Office review its previous Opinions concerning the appointment authority for the Georgetown County Higher Education Commission (Commission). See Ops. Atty. Gen. (September 2, 1988 and October 16, 1987). These Opinions concluded that the appointment authority for the Commission rests with the Governor pursuant to Act 110, Acts and Joint Resolutions of South Carolina, 1967 as amended by Act 416 of 1971. I have carefully reviewed these prior Opinions and the additional authority that you have cited in several recent letters to me and to other staff members and conclude that these Opinions are still the opinion of this Office. None of the prior opinions held, as you state in one of your letters, November 17, 1988, that County Council is prohibited from funding the Commission, nor was such a question addressed therein. The October 16, 1987 Opinion noted that the Commission was given the authority to "solicit funds and accept donations from various sources".

These prior Opinions are consistent with previous Opinions of this Office which have concluded that appointments to the Spartanburg County Higher Education Commission (April 24, 1980) and the Sumter County Higher Education Commission (December 16, 1977) are to be made by the Governor under the procedure set forth in the legislation establishing those Commissions. One previous Opinion of this Office concluded that the Charleston County Commission on Higher Education would fall under the appointment powers of the Charleston County Council under Section 4-9-170 because its members were then appointed pursuant to special legislation; however, the Opinion did not address the question of whether the Charleston Commission would be a political subdivision exempt from Council's appointment authority by the terms of Section 4-9-170 of the

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Code of Laws of South Carolina, 1976, or whether the educational functions of that Commission would exempt it from Council's appointment authority. (Ops. Atty. Gen., January 28, 1980).

Section 4-9-170 states that the authority of County Councils to provide for appointments by ordinance does not extend to political subdivisions. See 1985 Ops. Atty. Gen. Number 85-30; See also (Ops. Atty. Gen., December 16, 1977 - Sumter County Commission). Although none of the following Opinions addressed the question of appointment authority, previous Opinions of this Office have concluded that the Aiken County Commission on Higher Education (Ops. Atty. Gen., August 13, 1973), the Union County Commission (Ops. Atty. Gen., October 5, 1965) and the Horry County Commission (Ops. Atty. Gen., September 18, 1986) are political subdivisions of the State (See Section 4-9-170 of the Code). The Union Opinion also stated that its conclusions were applicable to the Western Carolina Commission and other similar Commissions. The legislation establishing the Union (Act 23 of 1965), Western Carolina (§59-57-10, et seq. of the Code), and Aiken (§21-1099 et seq. of the 1962 Code) Commissions is very similar to the Georgetown Commission's legislation and provides for appointment by the Governor upon the recommendation of the legislative delegation. Amendments to the legislation for Aiken (Act 697 of 1978), Union (Act 288 of 1987) and Western Carolina (Act 270 of 1984) since the Home Rule legislation was passed in 1975 continue to provide for appointments of those Commissions by the Governor upon the delegations' recommendations as do amendments to legislation for the similar Beaufort (Act 257 of 1985) and Spartanburg (Act 263 of 1981) Commissions. I express no opinion as to the appointment authority for these other Commissions, but provide these citations for your information. I am enclosing a portion of a court order in a case captioned Chester County Hospital and Nursing Center v. Martin, et al., from Chester County, which thoroughly discussed the attributes of political subdivisions. As discussed more fully below, Georgetown County Council may wish to make a factual determination as to the Commission's status as a political subdivision in determining whether Section 4-9-170 applies to the Commission, so that Council should make appointments to the Commission. The discussion of the attributes of a political subdivision in the Order would be valuable to Council in that regard.

Your letters concerning this matter have made clear that the appointment authority for the Commission is a continuing source of local controversy in Georgetown County and that Council has adopted ordinances in the past providing for the appointment of members of the Commission. To resolve this matter with certainty, you may wish to consider legislative clarification or a declaratory judg-

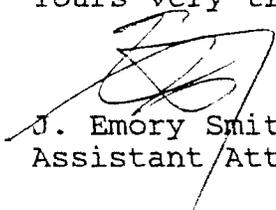
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ment action. In the alternative, you may wish to consider having County Council make a factual determination of whether the functions performed by the Commission in fact, together with the authority given to it by statute, make the Commission a political subdivision so as to be exempt from Council's appointment authority under Section 4-9-170 or involve the Commission sufficiently in education so as to exempt it from Home Rule control. Addressing factual questions such as the factual aspects of the functions of the Commission do not fall within the scope of Opinions of this Office. (Ops. Atty. Gen., December 12, 1983).

In conclusion, the previous Opinions of this Office concluding that the Governor has appointment authority for the members of the Georgetown County Commission on Higher Education are still the opinions of this Office; however, because of the continuing local controversy concerning this matter, you may wish to consider legislative clarification or a declaratory judgment action to resolve this matter with certainty. In the alternative, County Council could make a determination as to whether the functions performed by the Commission, as a matter of fact, together with the duties given to the Commission by law, make the Commission a political subdivision or give it a sufficient educational role to exempt the Commission from the Home Rule appointment powers of Council.

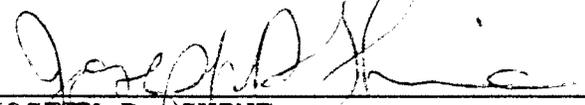
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps
Enclosures
cc: Colin R. Young, Chairman
Georgetown County Higher Education Commission

REVIEWED AND APPROVED BY:



JOSEPH D. SHINE
Chief Deputy Attorney General



ROBERT D. COOK
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