

# The State of South Carolina



## Office of the Attorney General

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September 4, 1986

Thomas O. Lawton, Jr., Esquire  
Allendale County Attorney  
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Dear Mr. Lawton:

By your letter of July 14, 1986, you have asked for the advice of this Office as to the authority which Allendale County Council might now have to alter the terms and number of members of the Allendale County Hospital Board. We have researched the legislative acts futilely to determine legislative intent and unfortunately have not found a straight-forward answer to your question. What we have found will be discussed, including two prior opinions which may assist you.

You have advised that the Board was created in 1946 pursuant to Act No. 620; accordingly, six members were to be chosen as specified to serve a six-year term, basically. In 1965, the first act was amended by Act No. 506, to provide for the appointment of seven Allendale County citizens, for six year terms, by the Governor upon the recommendation of the County Delegation. Further, by section 3 of Act No. 620 of 1946, the Board was declared to be an agency of Allendale County. If these acts were the only legislation dealing with the Board, an opinion of this Office dated July 5, 1979, enclosed herewith, would be applicable. However, there are other considerations.

Act No. 288 of 1967 amended Section 44-7-670, Code of Laws of South Carolina (1976, as revised), relating to selection and terms of trustees of hospitals or tuberculosis camps established by petition and election pursuant to present Article 5, Chapter 7 of Title 44 of the Code. Section 44-7-670 would permit the appointment of not less than three nor more than seven trustees by the county legislative delegation; however, Act No. 288 added a proviso:

Provided, that in Allendale County  
there may be appointed not more  
than nine trustees.

Thomas O. Lawton, Jr., Esquire  
September 4, 1986  
Page Two

You have advised that Allendale County Hospital was most probably not established following the procedures of Section 44-7-610 et seq.; thus, you have asked whether the limitations of Section 44-7-670 must be adhered to. See Op. Atty. Gen. dated February 1, 1979 (if Williamsburg County Hospital Board were established pursuant to Section 44-7-610 et seq., County Council would not be authorized to provide for appointment of members), enclosed.

A comparison of the two local acts relative to the Allendale County Hospital Board with the provisions of Section 44-7-610 et seq. shows that the provisions specifically adopted for Allendale County are to a very great extent inconsistent with the general laws on the specified types of hospitals or tuberculosis camps. For example, as already noted, manner of appointment and terms of office of Board members differ. In such instances, it is necessary to reconcile these differing statutes and give meaning to both insofar as may be possible. Bell v. South Carolina State Highway Dept., 204 S.C. 462, 30 S.E. 2d 65 (1944). In this instance, such may be possible.

Section 44-7-670 provides as follows:

Should the majority of the qualified electors voting upon the question be in favor of such county, township, city or town hospital or tuberculosis camp, the county legislative delegation of such county shall proceed to appoint not more than seven nor less than three trustees to be chose from citizens at large with reference to their fitness for such office, part of whom may be women, and all residents of the county, township, city or town, who shall constitute the trustees for such hospital or tuberculosis camp. The trustees shall hold their offices for two years or until their successors shall be appointed. Provided, that in Allendale County there may be appointed not more than nine trustees.

The statutory requirements to be met prior to holding a referendum, which must be favorable to proceed under Section 44-7-670, include such actions as presenting a petition to the county delegation, giving notice as detailed, and so forth. If these requirements are met, then a hospital board may be established as provided in Section 44-7-670, subject to the limitations on length of term, manner of appointment, and so forth. Construing the proviso strictly, and as limiting that which immediately precedes it, see Cain v. South Carolina Public Service Authority, 222 S.C. 200, 72 S.E. 2d 177 (1952), the proviso would permit any Allendale County Hospital Board established pursuant to this statutory mechanism to have as few as three or as many as nine members.

Thomas O. Lawton, Jr., Esquire  
September 4, 1986  
Page Three

You have stated that most probably the Board was not created pursuant to this statutory mechanism. It thus appears that Section 44-7-670 and its proviso may not be applicable. To be cautious, however, it would be a good idea to carefully check Allendale County records and election returns to rule out the possibility that Section 44-7-610 et seq. were not followed in establishing the hospital and Board. If the Board was not established following those procedures, then the enclosed opinion dated July 5, 1979, would be applicable. If that be the case, then Allendale County Council would not be prohibited from enacting a proper ordinance in effect amending the local laws as to the number and terms of Board members.

Enclosed is a copy of an opinion dated July 1, 1986 concerning authority of a county council to adopt ordinances in matters previously governed by local laws, as well as a copy of a recent Supreme Court decision, Graham v. Creel, Op. No. 22582, filed June 23, 1986, on the same subject. If Sections 44-7-610 et seq. are not applicable to your situation, then these materials may be helpful.

We trust that the foregoing satisfactorily responds to your inquiry. If you need further assistance, please advise.

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:

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