

1983 WL 182071 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 7, 1983

*1 The Honorable Edward H. Simpson, Jr.
Member
House of Representatives
104 Lewis Road
Clemson, South Carolina 29631

Dear Representative Simpson:

By your letter of November 21, 1983, to the Attorney General, you requested a response to questions raised by one of your constituents; a copy of his letter to you was enclosed. As Bob Cook, our Executive Assistant for Opinions, discussed with you on Tuesday, December 6, we will be happy to provide you with our research and thoughts on the matter since an opinion would not be appropriate.

Your constituent's first concern was the revocation of proxies. Solicitation and voting of proxies is codified in Section 33-11-140 of the Code of Laws of South Carolina (1982 Cum. Supp.) (copy enclosed). Subsection (c) discusses the revocation of proxies. The general law on proxies is contained in 19 Am.Jur.2d Corporations §§ 669, et seq., which is also enclosed. For revocation and termination in particular, see §§ 675-677. Finally, Robert's Rules of Order address proxy voting; a copy of the pertinent portion is enclosed.

Also enclosed is a copy of the Model By-laws (long form) contained in the Model Business Corporation Act. Please refer to Article II, Section 8, to see how the Model by-laws treat proxies. Your constituent should examine the similar provisions within the corporation's by-laws, as the answer he seeks may be found therein. Please note that the Model By-laws are only a prototype and do not conform to the laws of South Carolina, particularly in reference to the length of time a proxy is valid.

Your constituent's second concern was that the proxy statement sent to shareholders may have contained false or misleading statements. The prohibition against soliciting proxy statements using false or misleading information is found in Section 33-11-140(e) of the Code.

There are additional laws and rules which may apply to the matters raised by your constituent; this Office is not in a position to evaluate the applicability of the laws and rules since we do not know whether the corporation would be within the jurisdiction of the Securities Act of 1933 and/or the Securities Exchange Act of 1934. Enclosed is a portion of the Securities Exchange Act of 1934, codified as 15 U.S.C.S. § 78n; reference is made to Rule 14 promulgated by the Securities Exchange Commission (S.E.C.), codified at 17 C.F.R. § 240.14a-1, dealing with solicitation of proxies. If the corporation's stock is registered with the S.E.C., then these statutes and rules must be followed if proxies are solicited. Your constituent should consult with the corporation's counsel, his own attorney, or the S.E.C. in Washington, D.C., to determine the applicability of these statutes and rules.

I trust that the research materials enclosed with this letter will provide your constituent with answers to most of his questions as well as suggestions as to the proper channels to answer his remaining questions.

Sincerely,

*2 Patricia D. Petway
Staff Attorney

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