

1976 WL 30777 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 17, 1976

*1 Mr. Cary S. Grieffin
Attorney at Law
P. O. Box 5010
Hilton Head Island, South Carolina 29928

Dear Mr. Griffin:

You have requested an opinion from this Office as to whether or not the Broad Creek Public Service District Commission is authorized by Act No. 1739 of 1972, as amended by Act No. 575 of 1973, to compensate its members. In my opinion, it is not.

While Section 4(14) of Act No. 1739 does empower the commission to 'appoint officers, agents, employees and servants, prescribe the duties of such, [and] fix their compensation,' the commission members are neither officers, agents, employees or servants thereof for the purposes of appointment (since they are appointed pursuant to Section 3 of the Act), prescription of duties (since those are prescribed by Section 4 of the Act) or, in my opinion, fixing of compensation. Compensation is not indispensable to a public office, and the law creating the office may expressly provide that no compensation shall attach to it, or may fail to make any provision for compensation. . . . The absence of any provision for compensation carries with it the implication that the services of the incumbent are gratuitous, and, according to some decisions, no compensation can be recovered in such case. 63 AM.JUR.2d, Public Officers and Employees § 367 at 850 (1972).

Another amendment to Act No. 1739 which expressly authorizes the fixing of compensation for the commission members by the commission members would obtain the desired result. Until the South Carolina Supreme Court determines other than by way of dictum the scope of the 'no laws for a specific county' language of Article VIII, Section 7 of the State Constitution, however, such legislation might run afoul of that prohibitory provision. Cf., [Kleckley v. Pulliam](#), 265 S.C. 177, 217 S.E.2d 217 (1975).

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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