

1976 S.C. Op. Atty. Gen. 209 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4372, 1976 WL 22991

Office of the Attorney General

State of South Carolina

Opinion No. 4372

June 17, 1976

*1 The Honorable W. E. Berne
Member
South Carolina State Highway Commission
Post Office Box 9245
Columbia, South Carolina 29290

Dear Dr. Berne:

You have requested my opinion on the problem presented by the incapacity of Mr. H. Ernest Quarles, Jr. Mr. Quarles has heretofore been elected Chief Highway Commissioner by the State Highway Commission, to become effective upon the expiration of the term of the present Commissioner, Mr. S. N. Pearman. The latter's term will expire on June 30, 1976.

The probable duration and extent of Mr. Quarles's incapacity is not known at the present time.

The State Highway Commission and the Chief Highway Commissioner govern the Highway Department. Section 33–22, Code of Laws. The Chief Highway Commissioner is the executive and administrative head of the State Highway Department, directed to carry out the policies defined by the State Highway Commission and to administer the affairs of the Department. When the Commission is not in session, the Chief Highway Commissioner shall have and may exercise all powers belonging to the Commission. Section 33–53, Code of Laws.

It is my opinion that the statutes relating to the State Highway Department and its Commission vest primary authority in the Commission to direct the affairs of the Highway Department. The Chief Highway Commissioner is the administrative officer through whom the policies of the Commission are carried out. He is elected by the Commission for a four-year term and can only be removed for cause and after notice and hearing. He is, however, possessed of certain statutory authority.

By the provisions of Section 33–54, the Chief Highway Commissioner is given statutory authority to appoint such assistants, deputies and employees as he considers necessary to the proper administration of the Department and to prescribe their duties, powers and functions.

Mr. Quarles is presently serving as assistant to the Chief Highway Commissioner, having been appointed to that position by Mr. Pearman. When Mr. Pearman's term expires, the appointment of Mr. Quarles as assistant or deputy will likewise expire. Unless there is a Chief Highway Commissioner at the time of the expiration of Mr. Pearman's term, the Highway Department will be without an administrative head or chief subordinate administrative officials who are essential to the functioning of the Department.

Although Mr. Quarles may be physically unable to undertake the duties of Chief Highway Commissioner on July 1, 1976, he can, if on that date he is fully competent to understand the nature of the duties and responsibilities of the office, qualify therefor and appoint a deputy or assistants to function for and in his behalf. In such event, and in order to remove any question of validity, all actions undertaken by such deputies of a contractual nature or involving the exercise of decisional authority should be subsequently ratified by Mr. Quarles or by the Commission.

*2 If by July, 1, 1976, the condition of Mr. Quarles is not such as to permit his assumption of office, but it is reasonably considered that his condition will improve so as to permit his taking office, then the Commission, in my opinion, may undertake to provide for an interim method of administering the affairs of the State Highway Department. This can be undertaken by vesting in an individual of the Commission's choosing, the authority to administer the affairs of the Highway Commission, subject to the directives and orders of the State Highway Commission, until a Chief Highway Commissioner can be elected who is capable of assuming office.

This procedure is subject to some reasonable doubt and I do not recommend that it be followed unless it can be shown that Mr. Quarles's condition will improve at an early date so as to permit him to take office. The law contemplates that a vacancy be filled at a reasonably early date. The law further will not countenance an interruption of governmental functions and, for that reason, I feel that there is a reasonably valid basis for believing that the interim appointive procedure to which I have referred, with some degree of assurance, may be followed. It is my understanding that a procedure of this nature was undertaken at the time of the transfer of the powers of Chief Highway Commissioner from Mr. Stanley E. Williamson to Mr. Claude R. McMillan.

I therefore advise that, in my opinion, the Highway Commission should ascertain the precise physical and mental condition of Mr. Quarles. If he is capable of assuming the duties of the office, in the judgment of the Commission, but is unable physically to be present, he may take the oath of office, furnish the required bond, and undertake the appointment of such administrative assistants as he is authorized to make. If his condition does not permit him to undertake his duties in this manner, but it may be reasonably anticipated that he will regain his physical and mental faculties at a very early date, then the Commission, in my opinion, may make provision for an interim officer to administer the affairs of the Highway Department. I emphasize that the latter procedure cannot confidently be considered as free from legal doubt and I do not recommend this procedure except for a very brief interval.

Very truly yours,

Daniel R. McLeod
Attorney General

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