



ALAN WILSON
ATTORNEY GENERAL

August 30, 2021

John F. Fisher, Esq.
Callison Fisher, LLC
440 Knox Abbott Dr., Suite 385
Cayce, SC 29033

Dear Mr. Fisher:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter states the following:

As attorney for the Richland-Lexington Airport District, a political subdivision of the State of South Carolina (the "District"), I hereby submit this request for an opinion to address whether, according to the descriptions below, such district commissioners were appointed, and/or are continuing to serve, in accordance with, or in contravention of, S.C. Code of Laws Sec. 55-11-320.

- 1) Commissioner [1] has served continuously since 2001. She was initially appointed by the Richland County Legislative Delegation in February 2001, was reappointed in February 2005, and reappointed again in February 2018.
- 2) Commissioner [2] has served continuously since 2003. He was initially appointed by the Richland County Legislative Delegation in February 2003, was reappointed in February 2007, and reappointed again in February 2018.
- 3) Commissioner [3] has served continuously since 2005. He was initially appointed by the Richland County Legislative Delegation in February 2005, and was reappointed in February 2009.
- 4) Commissioner [4] has served continuously since 2012. He was initially appointed by the Richland County Legislative Delegation in February 2012 [two (2) years following the expiration of the term of his predecessor ...], was reappointed in February 2014, and reappointed again in February 2018.

Law/Analysis

It is this Office's opinion that S.C. Code § 55-11-320 prohibits reappointing members to the Richland-Lexington Airport Commission who have served two consecutive terms without a subsequent pause in service. For purposes of analysis, this opinion will assume the facts as presented in the scenarios above because this Office cannot find facts in an opinion.

Section 55-11-320 imposes a two-term limit for commission members and contains a holdover clause.

The members of the commission shall serve for terms of four years and until their successors are appointed. Members may not serve more than two consecutive terms. ... Notwithstanding the expiration of the term of office of any member, he shall continue to serve until his successor shall have been appointed, but any delay in appointing a successor shall not extend the term of the successor. ...

S.C. Code § 55-11-320 (emphasis added). These directives may conflict when a broad interpretation of the holdover clause is applied in a way that disregards the General Assembly's intent to impose a term limit.

To address whether the scenarios presented above comply with section 55-11-320, this opinion will examine the statute according to the rules of statutory construction. Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Broadly speaking, later legislation takes precedence over an earlier act. Lloyd v. Lloyd, 295 S.C. 55, 57-58, 367 S.E.2d 153, 155 (1988).

Prior to 1994, section 55-11-320 did not impose term limits on commission members. The statute read:

The commission shall be composed of eight member to be appointed by the Governor as follows: three members shall be appointed upon the recommendation of a majority of the Lexington County Legislative Delegation, three members shall be appointed upon the recommendation of a majority of the Richland County Legislative Delegation and two members shall be appointed upon the

recommendation of the city council of the City of Columbia. The members of the commission shall serve for terms of four years and until their successors are appointed and qualify. In the event of a vacancy for any reason, other than the expiration of a term, a successor shall be appointed in the same manner of the original appointment for the balance of the unexpired term. Notwithstanding the expiration of the term of office of any member, he shall continue to serve until his successor shall have been recommended, appointed and qualified, but any delay in appointing a successor shall not extend the term of such successor. ...

1971 Act No. 427, § 1 (emphasis added). In 1994, the statute was amended by Act 403 which was titled in relevant part “An Act to ... limit a member of the Commission to two consecutive terms, and to provide that a member serving on July 1, 1994 may serve until the expiration of the term for which he was elected and may serve two additional terms.”¹ The 1994 amendment demonstrates legislative intent to impose a term limit, but it also left the holdover clause in place which permits a member to “continue to serve” beyond the expiration of the term of office. The legislature’s apparent intent was to avoid those vacancies that might otherwise occur due to delays in the nomination and appointment process.² In 2012, however, the Legislature simplified the nomination and appointment process to reflect that members are no longer appointed by the Governor, but are instead appointed directly by the Richland and Lexington County Legislative delegations and the Columbia City Council. 2012 Act No. 117, § 1. Despite restructuring the appointment process, the Legislature again retained the holdover clause.

In Sloan v. Hardee, 371 S.C. 495, 640 S.E.2d 457 (2007), the South Carolina Supreme Court construed a similar statute that imposed a term limit and contained a holdover clause for the

¹ While section 55-11-320 has been amended subsequently, the language concerning term limits was left unchanged. See 2002 Act No. 326, § 10 (increasing commission members count from ten to twelve); 2012 Act No. 117, § 1; 2012 Act No. 270, § 5.

² For example, in State v. Bowden, 92 S.C. 393, 75 S.E. 866 (1912), the South Carolina Supreme Court examined a similar statute addressing appointments to the office of magistrate.

Unless the words “until their successors have been appointed and qualified” are to be erased from the Constitution, the time which may elapse between the expiration of the two years and the actual appointment by and with the advice and consent of the Senate and the qualification of the successor is as much a part of the specific term of office fixed by the Constitution as the two years. The failure of the Governor to appoint, or of the Senate to act upon the appointment or the rejection by the Senate of the appointment of the Governor, does not create a vacancy. On the contrary, it was the clear intention of the framers of the Constitution to provide against the inconvenience to the people of a vacancy arising from the failure of due appointment by the Governor and confirmation by the Senate of a successor in the office at the expiration of the two years.

Commissioners for the South Carolina Department of Transportation. The Court considered whether commission members were in violation of state law by serving consecutive terms. In relevant part, section 57-1-320(B) stated, “No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term.” *Id.* at 498 (emphasis in original). Further, section 57-1-330 then read, “Commissioners shall continue to serve until their successors are elected and qualify, provided that a commissioner may only serve in a hold over capacity for a period not to exceed six months....” *Id.* The Court found the plain meaning of “consecutive” limited commissioners to only one term.

“Consecutive” is defined as “successive; succeeding one another in regular order; to follow in uninterrupted succession.” *Black's Law Dictionary*, 276 (5th Ed. 1979). The plain and unambiguous meaning of the phrase “more than one consecutive term” is that a DOT commissioner may serve one term and may not serve a succeeding, consecutive term.

Id. at 499, 640 S.E.2d at 459. The Court rejected the respondents’ argument that the term “consecutive” allowed a commissioner “to serve one term, consecutive to a first term such that the commissioners may actually serve two successive terms.” *Id.* The Court’s analysis referenced several statutes that limit other commissioners and board members to “two consecutive terms,” including section 55-11-320 addressing the Richland-Lexington Airport Commission. The Court reasoned that accepting the respondents’ argument would also permit “an absurd result” of permitting all of those officers to serve a total of three terms in a row.

To construe the phrase “consecutive” as meaning a term, consecutive to a first term, would result in the phrase “two consecutive terms”, in actuality, meaning two terms consecutive to a first, for a total of three terms. To construe the statutes as asserted by Appellants would produce an absurd result.

Id. at 499–500, 640 S.E.2d at 459 (footnote omitted).

When Sloan is applied to the scenarios presented above, it is this Office’s opinion that a court would hold section 55-11-320 prohibits a commission member from serving more than two consecutive terms. Again, Sloan defined “consecutive” to mean “to follow in uninterrupted succession.” *Id.* at 499. Therefore, a commission member could not serve two full terms and then be reappointed to the commission without an interruption for a term. An alternative interpretation that permits a commission member to serve a total of three or more terms without a break “would produce an absurd result.” *Id.* at 499–500.

The present questions are complicated by the imprecise language of the holdover clause in section 55-11-320. In Sloan, DOT commissioners were expressly limited to “serve in a hold over capacity for a period not to exceed six months.” *Id.* at 498. In contrast, the holdover clause in section 55-11-320 reads, “Notwithstanding the expiration of the term of office of any member, he shall continue to serve until his successor shall have been appointed, but any delay in appointing a successor shall not extend the term of the successor.” S.C. Code § 55-11-320. When read in isolation, this language suggests that a commission member could potentially serve in perpetuity

until a successor is appointed. Of course, the statute must instead be read as a whole which includes the term limit of “two consecutive terms.” A court may reconcile the term limit and holdover clauses by reading “any delay in appointing a successor shall not extend the term of the successor” to implicitly establish that a member can only serve in a holdover capacity during the term following the member’s second consecutive term. Certainly, the statute authorizes a member to continue to serve for some period of time beyond the expiration of a member’s second four year term to avoid vacancies in office. Legislative or judicial clarification may be warranted to provide greater certainty regarding when the holdover period in section 55-11-320 expires.

It should be noted that even when an officer serves in a holdover capacity, the appointing authority remains authorized to appoint a successor. See Bradford v. Byrnes, 221 S.C. 255, 263, 70 S.E.2d 228, 232 (1952) (“[A]lthough no corporal vacancy in the office exists in such a case, nevertheless there is a vacancy in the sense that the appointing or electing power may proceed to fill the office by choosing a successor.”). If a commission member has served longer than two full terms, the appointing authority for that member’s seat may name a successor at any time.

Finally, this opinion will address the scenarios presented in the request letter. Again, this Office cannot find facts in an opinion. Instead, we will assume the facts as presented:

- 1) Commissioner [1] has served continuously since 2001. She was initially appointed by the Richland County Legislative Delegation in February 2001, was reappointed in February 2005, and reappointed again in February 2018.

It is this Office’s opinion that a court would likely hold Commissioner 1 is no longer serving in accordance with S.C. Code § 55-11-320. Commissioner 1 was appointed to and served two four-year terms on the Commission beginning in 2001. Thereafter, Commissioner 1 continued to serve in a holdover capacity until 2018. In February of 2018, Commissioner 1 was appointed a third time without an interruption in service. In total, the facts presented establish that Commissioner 1 has served for over twenty consecutive years. If these years of service were full terms, Commissioner 1’s service would total five consecutive four-year terms. As Sloan stated interpreting section 55-11-320 to authorize three consecutive terms “would produce an absurd result,” serving the equivalent of five terms without interruption would also be prohibited under the terms of the statute. Sloan, 371 S.C. at 499–500, 640 S.E.2d at 459.

- 2) Commissioner [2] has served continuously since 2003. He was initially appointed by the Richland County Legislative Delegation in February 2003, was reappointed in February 2007, and reappointed again in February 2018.

It is this Office’s opinion that a court would likely hold Commissioner 2 is no longer serving in accordance with S.C. Code § 55-11-320. Commissioner 2 was appointed

to and served two four-year terms on the Commission beginning in 2003. Thereafter, Commissioner 2 continued to serve in a holdover capacity until 2018. In February of 2018, Commissioner 2 was appointed a third time without an interruption in service. In total, the facts presented establish that Commissioner 2 has served for over eighteen consecutive years. If these years of service were full terms, Commissioner 2's service would total more than four consecutive four-year terms. As Sloan stated interpreting section 55-11-320 to authorize three consecutive terms "would produce an absurd result," serving the equivalent of more than four terms without interruption would also be prohibited under the terms of the statute. Sloan, 371 S.C. at 499–500, 640 S.E.2d at 459.

- 3) Commissioner [3] has served continuously since 2005. He was initially appointed by the Richland County Legislative Delegation in February 2005, and was reappointed in February 2009.

It is this Office's opinion that a court would likely hold Commissioner 3 is no longer serving in accordance with S.C. Code § 55-11-320. Commissioner 3 was appointed to and served two four-year terms on the Commission beginning in 2005. Thereafter, Commissioner 3 continued to serve in a holdover capacity until 2018. In total, the facts presented establish that Commissioner 3 has served for over sixteen consecutive years. If these years of service were full terms, Commissioner 3's service would total four consecutive four-year terms. As Sloan stated interpreting section 55-11-320 to authorize three consecutive terms "would produce an absurd result," serving the equivalent of four terms without interruption would also be prohibited under the terms of the statute. Sloan, 371 S.C. at 499–500, 640 S.E.2d at 459.

- 4) Commissioner [4] has served continuously since 2012. He was initially appointed by the Richland County Legislative Delegation in February 2012 [two (2) years following the expiration of the term of his predecessor ...], was reappointed in February 2014, and reappointed again in February 2018.

It is this Office's opinion that a court would likely hold Commissioner 4 continues to serve in accordance with S.C. Code § 55-11-320. Commissioner 4 began serving the unexpired portion of his predecessor's term in 2012. Thereafter, Commissioner 4 was appointed to serve two four-year terms on the Commission beginning in 2014. It is this Office's understanding that Commissioner 4's second full term will expire in February 2022. This Office's December 16, 2004 opinion addressing the Richland-Lexington Airport Commission stated, "[W]e have consistently construed the phrase 'more than two consecutive terms' as two full terms." Op. S.C. Att'y Gen., 2004 WL 3058236, at 2 (December 16, 2004). Therefore, because

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Commissioner 4 only served a partial term on the commission in 2012, he remained eligible to serve two full terms on the Commission. From the facts presented, Commissioner 4 is currently serving a second full term which runs through 2022.

Conclusion

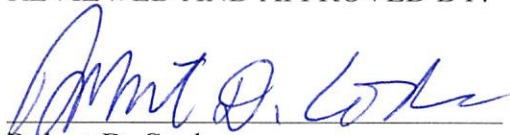
As is discussed above, it is this Office's opinion that S.C. Code § 55-11-320 prohibits reappointing members to the Richland-Lexington Airport Commission who have served two consecutive terms without a subsequent pause in service.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Houck".

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook".

Robert D. Cook
Solicitor General