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May 29, 1992

Dr. James A. Timmerman, Jr.
Executive Director, South Carolina
Wildlife & Marine Resources Department
Post Office Box 167
Columbia, South Carolina 29202

Dear Dr. Timmerman:

By your letter of May 12, 1992, you requested the opinion of our Office concerning the current members of the South Carolina Wildlife and Marine Resources Commission and the effect of the recent redesignation of congressional districts. Given the requirements of S.C. Code Ann. § 50-3-10, you wish to know whether the current commissioners will continue to serve until their respective terms expire, whether the Governor must select new Commission members from the various congressional districts, and what terms the new appointees would serve if new appointments must be made.

Section 50-3-10 provides for appointment of a commission to govern the South Carolina Wildlife and Marine Resources Department. The commission is to be composed of seven members, one appointed from each congressional district and one from the state at large, appointed by the Governor with the advice and consent of the Senate. Terms of six years, and until successors have been appointed, are provided for in § 50-3-20. The commission is presently composed of the following members: (first) J.M. Pendarvis, of Estill (Hampton County), whose term expires July 1, 1994; (second) Marion Burnside, of Eastover (Richland County), term expiring July 1, 1994; (third) Larry Owens, of Easley (Pickens County), term expiring July 1, 1992; (fourth) Dr. George Graham, of Spartanburg (Spartanburg County), term expiring July 1, 1996; (fifth) Charles L. Compton, of Laurens (Laurens County), term expiring July 1, 1992; (sixth)

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Dr. Howard Poston, of Kingstree (Williamsburg County), term expiring July 1, 1996; and (at large) Thomas W. Miller, of Anderson (Anderson County), term expiring July 1, 1994.

Following to the redistricting, Mr. Owens (third), Dr. Graham (fourth), and Dr. Poston (sixth) will continue to reside in the congressional district from which they were appointed. Mr. Compton would be located in the third congressional district; Mr. Pendarvis, in the second; and Mr. Burnside, in the sixth. Under the redrawn districts, the first and fifth districts would have no representation. Mr. Miller is unaffected by the redistricting because he was appointed to the commission from the state at-large rather than from a congressional district.

As to acts of the General Assembly reapportioning congressional district lines, our Office has concluded that "congressional redistricting acts should be construed so as to allow existing districts to continue intact until the end of the Congress in which they are represented." Op. Atty. Gen. No. 2062, dated June 7, 1966. In addition, by an opinion dated December 6, 1971, this Office addressed the issue of which districts the congressmen, elected in 1970, would represent: the districts from which they were elected in 1970 or the districts as redrawn in 1971. The opinion stated:

In our view, South Carolina's congressmen continue to represent the districts as they existed at the time the congressmen were elected in 1970 because the 1971 statute changing the boundaries of the congressional districts in this state was intended to apply to the next General Election which will be in 1972.

...

See also Op. Atty. Gen. dated March 29, 1972 (reapportionment act as to senatorial districts not effective in all respects until senators are elected thereunder). Even though the 1992 reapportionment plan came about by means of a court order instead of an act of the General Assembly, such would not likely be fully operational until new members of Congress are elected thereunder (as to congressmen), though of course certain aspects must be implemented immediately to permit candidates to file for primary elections, conduct of elections, and so forth.

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As to redrawing boundaries for offices other than Congress, we have been able to locate authority for the proposition that reapportionment affects future elections, that such is not intended to affect the title to one presently holding office or that officer's tenure. In Anggelis v. Land, 371 S.W.2d 857 (Ky. Ct. App. 1963), the court noted that senators must be residents of the district from which they are elected, but

once he is elected he represents generally all the people of his district as it exists during his tenure in office. Certainly no one would suggest that a Senator represents only those persons who voted for him. The fact that the persons who are represented by the Senator from the Twelfth District are no longer the ones who elected him indicates there is a hiatus following a redistricting of the state. However, this situation is comparable to that which results when persons move from one district to another.

Id., 371 S.W.2d at 859. In Selzer v. Synhorst, 113 N.W.2d 724 (Iowa 1962), the court observed:

The idea that we are personally represented and represented only by officials for whom we have voted stretches too far the theory of representative government. In some states our incumbent President did not receive a majority vote. In Washington, D.C., the residents did not vote at all. The President however, is still the President of all the people.

Id., 113 N.W.2d at 730-731. The court also noted that a senator is not merely a mouthpiece for those who voted for him; once elected, he is representative of all the people, exercising his authority for the welfare and protection of all the people. Finally, the court noted in Harris v. Shanahan, 192 Kan. 183, 387 P.2d 771 (1963), that when a legislator is duly elected from a legislative district then created by law, has been qualified and has taken the oath of office, he is entitled to exercise the powers of his office during the term for which he was elected, as a de jure officer.

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Applying these principles to the Wildlife and Marine Resources Commission, which is appointed rather than elected, we would conclude that the reapportionment plan would not be fully operational until the new members of Congress, elected in the November 1992 general election, begin to exercise their congressional duties. However, in keeping with the spirit of the newly-adopted plan, it would be advisable to make future appointments with the redrawn lines in mind. For those appointments expiring on July 1, 1992, in the present third and fifth districts, those new appointments should most probably be made for six-year terms from the newly constituted districts. As appointments expire or vacancies occur after the new members of congress are elected and take office, replacements would be made for new terms or the unexpired term of the vacated officer as appropriate under the new plan. We are of the view that members presently in office, who are affected by the redrawn lines, would complete their appointed terms.

It could well be argued that, once the new congressional district lines become effective, one has vacated his office if he no longer resides in his numbered district. Such vacation would cause the officer to thus be a de facto officer who could serve until his successor should be selected, according to that argument. See Op. Atty. Gen. dated May 3, 1971. However, once selected, a commission member represents the interests and general welfare of all the state's inhabitants, rather than only those of a portion of the state. We believe the more preferable approach to be that as stated above, that commission members continue as appointed until their terms expire.

Based on the foregoing, it is our opinion that members of the South Carolina Wildlife and Marine Resources Commission whose terms expire in July 1992 should most probably be replaced from the newly constituted congressional districts to serve six-year terms. Those members whose terms expire in July 1994 or July 1996 would be replaced according to the new congressional district lines, for terms of six years (except, of course, for the member at large who is unaffected by the redrawn lines).

In rendering this opinion, we note that appointments or elections to several dozen boards of this State are made on the basis of congressional district lines. We have attempted to respond to your inquiry keeping that fact in mind, but we must acknowledge that today's opinion will not be responsive to all questions which will arise under the same circumstances for all boards or commissions. We have attempted to be as responsive as is possible as to the Wildlife and Marine Resources Commission.

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We trust that the foregoing has satisfactorily responded to your inquiry. If questions remain, please advise. With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:ss

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

cc: Mark R. Elam, Esquire
Senior Counsel to the Governor