



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 25, 2000

Ronald W. McKinney, Esquire
Greenville City Attorney
P.O. Box 2207
Greenville, S. C. 29602

RE: Opinion Request of October 15, 1999

Dear Mr. McKinney:

You requested an opinion of this Office on Act No. 50, effective June 1, 1999, which amends Chapter 3 of title 31 of the South Carolina Code of Laws, with regard to the appointment and tenure of "directly assisted" persons to municipal housing authorities. By analyzing the specific statutes under South Carolina law on statutory interpretation, we respond as follows to your specific questions:

1. Shall "directly assisted" persons who are appointed to a municipal housing authority be appointed by the mayor alone or by the mayor and council?

Section 31-3-340 of South Carolina Code of Laws on the appointment of commissioners to municipal housing authorities was amended in 1999 to read as follows:

When the council of a municipality adopts a resolution as provided in this chapter, the council shall appoint not less than five nor more than seven persons as commissioners of the authority created for the municipality. At least one of the commissioners appointed shall be a person who is directly assisted by the public housing authority. . . . The mayor shall appoint the person directly assisted by the authority unless the authority's rules require that the person be elected by other persons who are directly assisted by the authority.

S.C. Code Ann. § 31-3-340 (Law. Co-op. Supp. 1999) (omitting the exception to the requirement for a commissioner who is directly assisted by the authority). In your opinion request, you stated that the rules of the authority do not require that the "directly assisted" commissioner be elected by others

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who are directly assisted by the authority.

From the language of this statute, it appears that the first sentence that the council appoints the commissioners of the authority conflicts with the sentence regarding the mayor appointing the "directly assisted" commissioners. Resort must be made, however, to accepted rules of statutory construction to resolve this inconsistency. The intention of the legislature is the primary guideline used in interpreting a statute. Alton Newton Evangelistic Ass'n, Inc. v. South Carolina Employment Security Commission, 284 S.C. 302, 326 S.E.2d 165 (Ct. App. 1985). "The intention of the legislature is to be ascertained primarily from the language used in the statute . . ." 82 C.J.S. Statutes § 322b(1). As long as the interpretation is reasonable and not in conflict with the legislative intent, it is a cardinal rule of construction of statutes that force, meaning, significance, or effect must be given if possible, and if it can fairly and reasonably be done, to the whole statute and every part, section and provision thereof, and to all the language employed or contained therein so that no part will become inoperative, and so as to render the statute harmonious, consistent and symmetrical whole. 82 C.J.S. Statutes § 345. See also Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1975).

Following these statutory interpretation guidelines, these two apparently inconsistent portions of section 31-3-340 may be interpreted so as to give meaning and effect to both parts. While the whole council appoints five to seven commissioners, one of these commissioners must be directly assisted by the authority, unless the exception contained within the statute is met, and the mayor alone appoints the "directly assisted" commissioner unless the rules of the authority require that the "directly assisted" commissioner is elected by others who are directly assisted by the authority.

The section on removal of commissioners reinforces that the mayor alone appoints the "directly assisted" commissioner:

The commissioner who is directly assisted by the authority must remain as an assisted resident in order to continue service on the board of commissioners. In the event that the commissioner who is directly assisted by the authority vacates the public housing unit or is evicted from the public housing unit, the mayor must automatically remove the commissioner from the board of commissioners with no opportunity to be heard or to contest the removal.

S.C. Code Ann. § 31-3-370 (Law. Co-op. Supp. 1999). Thus, the mayor alone, not the council as a whole, appoints the "directly assisted" commissioner unless the rules of the authority require that this commissioner is elected by others directly assisted by the authority.

2. Shall directly assisted persons who are appointed to a city housing authority serve a term of five years or are they appointed for life if they otherwise continue to be qualified as "directly assisted" persons?

With regards to the terms of the commissioners of the authority, Section 31-3-340 specifies as follows:

The commissioners, other than the commissioner who is directly assisted by the authority, shall serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, but thereafter commissioners, other than the commissioner who is directly assisted by the authority, shall be appointed as aforesaid for a term of office of five years except that all vacancies shall be filled for the unexpired term. The commissioner who is directly assisted by the authority must remain as an assisted resident in order to continue service on the board of commissioners.

S.C. Code Ann. § 31-3-340. As outlined above under the section entitled "Removal of commissioners," if the "directly assisted" commissioner vacates or is evicted from the public housing unit, the mayor must automatically remove the "directly assisted" commissioner from the board. See S.C. Code Ann. § 31-3-370 (Law. Co-op. Supp. 1999).

As you noted in your opinion request, the statute does not provide for a term limit for the "directly assisted" commissioner. As you noted further, life tenure for public officers is not favored and is authorized only in exceptional circumstances. 67 C.J.S. Officers, § 69. As we have stated in previous opinions, it is a general rule that, when the term or tenure of a public officer is not fixed by law, and the removal is not governed by constitutional or statutory provision, the power of removal is incident to the power to appoint and the term of the appointed officer expires with the expiration of the term of the appointing body. Id. Thus, the appointing power, when the term is not fixed by law, may remove the appointee at pleasure and without notice or opportunity to be heard. State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948). See 1997 S.C. Op. Atty. Gen., 1997 WL 205819 (Feb. 14, 1997); 1997 S.C. Op. Atty. Gen., 1997 WL 323766 (May 13, 1997); 1988 S.C. Op. Atty. Gen. 79 (Mar. 11, 1988); 1985 S.C. Atty. Gen., 1985 WL 259244 (May 23, 1985). Of course, removal for such unconstitutional reasons as race or religion may be construed as a restriction on the removal power. Id.

Based upon this law, the "directly assisted" commissioner, when appointed by the mayor, serves at the pleasure of the mayor, and the term of the "directly assisted" commissioner expires with the term of the mayor. Further, if the "directly assisted" commissioner vacates or is evicted from the housing authority, the mayor must remove the commissioner.

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I trust this analysis adequately responds to the questions posed. This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in cursive script, reading "Christie Newman Barrett". The signature is written in dark ink and is positioned above the printed name.

Christie Newman Barrett
Assistant Attorney General