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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 5, 2005

Swati S. Patel, Chief Legal Counsel  
Office of the Governor  
State of South Carolina  
Post Office Box 12267  
Columbia, South Carolina 29211

Dear Ms. Patel:

In a letter to this office you indicated that the Office of the Governor has been asked by certain members of the Sumter Legislative Delegation to replace Mr. Rudy Newman on the Central Carolina Technical College Board. You further indicated, however, that when the delegation voted to remove Mr. Newman from this board at a public hearing, only five of the seven delegation members were present and voting. Of the five members present, three members voted for Mr. Newman and two members voted against Mr. Newman. After the voting, a senator who had voted against Mr. Newman stated that he had the proxies for the other two non-present delegation members. The proxies were not in writing. You stated that your office is concerned about making a new appointment to this board due to the questionable validity of the proxy voting which resulted in a vote against Mr. Newman. As a result, you have raised the specific question as to whether or not the delegation was allowed to use two undocumented proxy votes in a public hearing which resulted in a vote against Mr. Newman's reappointment to the Central Carolina Technical College Board. You did not indicate whether there was any specific policy regarding proxy voting that had been adopted by the particular delegation referenced in your letter prior to the vote having taken place.

Enclosed is a copy of a prior opinion of this office dated November 20, 1991 which I believe is responsive to your inquiry. That opinion dealt with the question of the legality of county delegation members voting by written proxy on issues when the members were unable to attend legislative meetings. In the situation prompting the opinion request, apparently there was a policy adopted by the legislative delegation which did allow members to vote by proxy. That policy required that any proxy be in writing, signed by the delegation member and registered with the delegation secretary.

The opinion stated that this office has generally concluded that in the absence of specific statutory authorization as to a particular board or office, proxy voting is not authorized. The referenced opinion further noted that there is no statute which creates a county legislative delegation

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as an entity or which provides for the operations or procedures of a delegation. While the opinion also states that this office is unaware of any rules or procedures adopted by the General Assembly which would govern the conduct of delegation business, it was commented that it is doubtful as to whether legislative rules would be controlling as to a delegation meeting.

In reviewing the question, the opinion set forth several matters to be considered in determining the propriety of a proxy vote and concluded as follows:

No statute establishes the delegation as an entity or prescribes its manner of operation. Thus, no statute expressly addresses the practice of proxy voting by the resident House member or Senator who might not be present at a meeting at which an appointment affecting that area of residence might be made...Appointments to boards or commissions are not exclusively legislative or executive in nature, however, and could possibly be carried out by proxy vote of the resident House member or Senator in the absence of a controlling statute...(While)...(t)he better practice would be to cast such votes in person,...(b)ecause this practice as to appointments is exclusively within the control of the delegation,...we must leave the determination of such policy decisions to the delegation.

Consistent with such, it appears that it would be a matter for resolution by the particular delegation referenced in your letter as to the authority or validity of an proxy vote as to matters considered by that delegation.

If there are any questions, please advise.

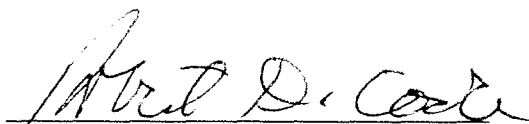
Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General