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HENRY McMASTER  
ATTORNEY GENERAL

May 23, 2006

Mark W. Tollison, Esquire  
Greenville County Attorney  
County Square  
301 University Ridge, Suite 2400  
Greenville, South Carolina 29601

Dear Mr. Tollison:

From your letter we understand you represent Greenville County and are requesting an opinion concerning county council appointments to boards and commissions. Specifically, you ask:

if there is a legal requirement that the appointments made by County Council reflect the geographic areas of the county. In particular, I am seeking guidance on requirements for a County Council with twelve (12) elected single-member districts making appointments to local boards that are composed of twelve (12) appointed members. Does State or Federal law require twelve-member appointed boards to be composed of members representing each of the County Council's twelve single-member districts?

You add:

The County has several twelve member local boards that County Council assumed appointive authority after Home Rule. Some of the affected boards oversee the expenditure of State or Federal monies. An additional question is whether the receipt of state/federal monies has any impact on the need for membership reflecting each Council district?

#### Law/Analysis

Initially, we note an opinion of this Office dated May 9, 1988, addressing whether appointments to a county board of registration and a county election commission must reflect the various geographic areas within a county. After reviewing several statutes, some which included geographical requirements and some which did not, we determined:

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The express inclusion of such a geographic residential requirement for many boards and commissions of the State and its political subdivisions would impliedly exclude that type of requirement from statutes governing appointments of boards and commissions in which that type of requirement is not mentioned.

Op. S.C. Atty. Gen., May 9, 1988. Although we recognized a “fair or equitable practice would be to appoint members to represent the broadest segments of geography or population of the county as possible,” we found “it is not legally or statutorily required.” Id.

We reiterated the findings of our May 9, 1988 opinion in a subsequent opinion dated March 10, 2005. Additionally, we addressed whether the “one person, one vote” requirement of the federal Constitution is invoked when member are appointed. The United States Supreme Court addressed the principal of one person, one vote as applied to states in Reynolds v. Sims, 377 U.S. 533 (1964), involving legislative reapportionment in Alabama. The Supreme Court in Reynolds determined:

Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status.

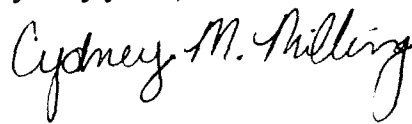
Id. at 565-66 (citations omitted).

Numerous federal and state courts have since addressed issues involving the application of the “one person, one vote” constitutional requirement. As we noted in our March 10, 2005 opinion, the United States Supreme Court in Hadley v. Junior College District of Metropolitan Kansas City, Mo., 397 U.S. 50, 58 (1970), stated: “where a State chooses to select members of an official body by appointment rather than election, and that choice does not itself offend the Constitution, the fact that each official does not ‘represent’ the same number of people does not deny those people equal protection of the laws.” Thus, in our March 10, 2005 opinion, reiterating a prior opinion, we concluded “[s]election by appointment . . . does not constitutionally require weighted voting.” Op. S.C. Atty. Gen., March 10, 2005. For additional support for our conclusion we cited Sailors v. Board of Education of Kent County, 387 U.S. 105 (1967), a United States Supreme Court case. Id. That case held: “Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of ‘one man, one vote’ has no relevancy.” Sailors, 387 U.S. at 111.

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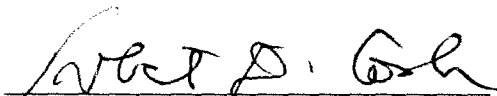
Based on the authorities cited above, assuming the enabling legislation creating the boards to which you refer does not impose a requirement that certain members represent certain areas, we presume no such requirement is legally required. In addition, because the members of the boards referenced in your letter are appointed by a county council, rather than popularly elected, we are of the opinion that such appointments are not constitutionally required under the principle of one person, one vote to equally represent the same number of people.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General