



HENRY McMASTER  
ATTORNEY GENERAL

November 3, 2010

The Honorable André Bauer  
Lieutenant Governor  
State of South Carolina  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Lieutenant Governor Bauer:

In a letter to this office you questioned whether the members of the South Carolina Advisory Council on Aging must be commissioned by the Secretary of State upon their appointment by the Lieutenant Governor.

S.C. Code Ann. § 43-21-10 states that

[t]here is created in the Office of the Lieutenant Governor, the Division of Aging. The division must be supported by the Advisory Council on Aging consisting of one member from each of the ten planning and service areas under the Division on Aging and five members from the State at large. The director of the division shall provide statewide notice that nominations may be submitted to the director from which the Lieutenant Governor shall appoint the members of the council....

There is no express provision regarding members of the Advisory Council being commissioned by the Secretary of State. However, S.C. Code Ann. § 8-3-10 provides that

[i]t shall be unlawful for any person to assume the duties of any public office until he has taken the oath provided by the Constitution and been regularly commissioned by the Governor.

Article VI, Section 4 of the State Constitution sets forth that "...all..officers of the State and its political subdivisions, before entering upon the duties of their respective offices, shall take and subscribe the oath of office...." Article VI, Section 6 of the State Constitution states that

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[t]he Governor shall commission all officers of the State. All commissions shall be issued in the name and by the authority of the State of South Carolina, sealed with the Great Seal, signed by the Governor, and countersigned by the Secretary of State....

See also: Op. Atty. Gen. dated March 10, 1993 (“...members would subscribe an oath when they receive documents relative to their appointment from the Secretary of State, who would issue their commissions upon receipt of the document containing the oath.”); Op. Atty. Gen. dated September 6, 1989 (“[a]ll appointments made by a governor are transmitted to the Secretary of State, who sends an oath of office form to appointees and issues commissions to appointees when the oath has been taken.”); Op. Atty. Gen. dated November 18, 1977 (“[t]he general statement of the law concerning the effective date of an appointed office is that the office holder legally assumes his position only after he has been validly commissioned into the office.”). Consistent with the above, in the opinion of this office, the members of the South Carolina Advisory Council on Aging must be commissioned by the Secretary of State upon their appointment by the Lieutenant Governor.

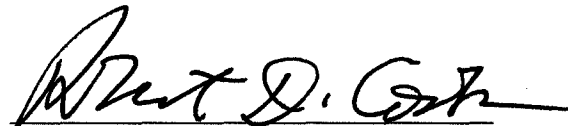
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General