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HENRY McMASTER
ATTORNEY GENERAL

February 8, 2006

Adrienne Riggins Youmans, Director
South Carolina Department of Labor, Licensing and Regulation
Post Office Box 11329
Columbia, South Carolina 29211-1329

Dear Ms. Youmans:

We received your letter regarding the South Carolina Firefighter Mobilization Oversight Committee (the "Committee"). From your letter, we understand that since the legislature enacted the Firefighter Mobilization Act of 2000 (the "Act"), the Department of Labor, Licensing and Regulation, through its Fire and Life Safety Division "has provided support to the Committee, to the State Firefighter Mobilization Plan, and to the mutual aid agreements that figure into the plan." As you indicate:

Recently the Committee has claimed ownership of equipment located at the South Carolina Fire Academy and dedicated to emergency response under the South Carolina Firefighters Mobilization Plan. This equipment has largely been secured through homeland security grants from the federal government. The Committee has now informed the State Fire Marshal that it intends to seek an Attorney General's opinion concerning their financial responsibility and ownership to the US & R equipment and concerning their control of hiring and firing state employees to support the Mobilization Plan.

Thus, you request, on behalf of the Department of Labor, Licensing and Regulation and the State Fire Marshal, our opinion as to the interpretation of sections 23-49-60(A) and (B) and 23-49-70 of the South Carolina Code.

Law/Analysis

Ownership of Equipment

Initially, we address the question of the Committee's ownership of equipment located at the South Carolina Fire Academy. The General Assembly created the Committee pursuant to the enactment of section 23-49-20 of the Act (Supp. 2005). Under section 23-49-50 of the South Carolina Code (Supp. 2005), the General Assembly charged the Committee with the task of

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design, and policy of lawmakers. Subtle or forced construction of statutory words for the purpose of expanding a statute's operation is prohibited." TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998).

Neither section 23-49-60 of the South Carolina Code, nor any other section in the Act, mentions the Committee's ability to own or maintain property. Furthermore, after a thorough reading of the Act, it does not indicate the Legislature established the Committee as a body politic and corporate. Thus, we presume the Legislature did not intend to grant the Committee the typical corporate powers, including the power to purchase, acquire, hold, use, sell, pledge, or dispose of personal property. See S.C. Code Ann. § 33-3-102 (1990).

Our understanding that the Legislature did not intend for the Committee to own property is also supported by section 23-49-120 of the South Carolina Code (Supp. 2005). Section 23-49-120, pertaining to donations of fire protection, control and rescue equipment, provides "[t]he South Carolina Forestry Commission may accept donations of new or used fire protection, control, and rescue equipment from individuals or organizations." Because this section is contained within the Act, we presume this type of equipment would be used as part of the Mobilization Plan. Therefore, if the Legislature intended the Committee to have authority to maintain ownership of the equipment, it would have stated the Committee, rather than the Forestry Commission, may accept donations of equipment.

Accordingly, we find the Committee does not have the authority to own the equipment located at the South Carolina Fire Academy. Additionally, in our opinion, this conclusion remains true regardless of whether or not the equipment is dedicated to emergency response under the Mobilization Plan.

Employment of Support Staff

Next, we address your question as to whether the Committee may maintain control of hiring and firing state employees supporting the Mobilization Plan. In our review of the Act, we only found one provision indicating the Committee's authority to hire and fire state employees in order to support the Mobilization Plan. Section 23-49-70 of the Act (Supp. 2005) states the Committee

shall appoint the number of state and regional coordinators the committee considers necessary and sufficient for the execution of the South Carolina Firefighter Mobilization Plan. A state coordinator shall be designated by the committee to be in overall charge of managing the state response for fire and rescue services. A regional coordinator is in overall charge of a region for the purpose of managing the regional response for fire and rescue services and must report directly to the state coordinator designated by the committee.

This provision clearly provides the Committee with the authority to hire state and regional coordinators. Although this provision does not expressly provide the Committee with the authority

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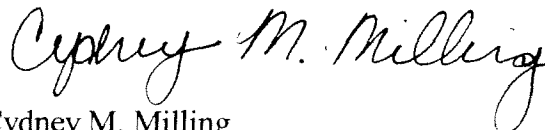
to remove a state and regional coordinator, as stated in an opinion of this office dated October 9, 2000, "the power of removal is incident to the power to appoint" when the term of the appointed office is not fixed by law. Op. S.C. Atty. Gen., October 9, 2000 (citing State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 9-10, 48 S.E.2d 601, 604 (1948) ("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.")). Thus, we recognize the Committee's authority to appoint and remove state and regional coordinators for the Mobilization Plan.

However, in our opinion, the Committee's authority with respect to hiring and firing state employees ends there. As stated previously, the Committee, which is a creature of statute, only has those powers given to it by the Legislature. Med. Soc'y of South Carolina, 334 S.C. at 275, 513 S.E.2d at 355. From a plain reading of the statute, our Legislature chose to give the Committee authority to hire and fire state employees only with respect to the hiring and firing of state and regional coordinators. Our courts have long recognized the rule of statutory construction that to express or include one thing in legislation implies the exclusion of another. Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002) (citing Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)). Thus, by specifically giving the Committee the power to appoint certain employees, the Legislature implied that it did not have the power to appoint other employees. Therefore, we find the Committee sole power to hire and fire state employees rests in section 23-49-70 and is limited to state and regional coordinators.

Conclusion

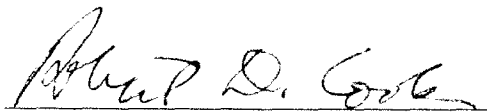
In reviewing the Act and by employing the relevant rules of statutory construction, we conclude the Committee does not have the authority to own and maintain equipment. In addition, we find the Committee possesses the authority to appoint and remove state and regional coordinators necessary and sufficient for the execution of the Mobilization Plan. However, the Act does not give the Committee the authority to employ other state employees in order to carry out its functions.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General