



7010 Library

The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
ATTORNEY GENERAL

October 9, 2000

The Honorable Larry K. Grooms  
Senator, District No. 37  
131 Indian Field Drive  
Bonneau Beach, South Carolina 29431

**RE: Informal Opinion**

Dear Senator Grooms,

By your letter of September 29, 2000, you have requested an opinion of this Office concerning the Colleton County Transportation Committee (CCTC). Specifically you ask:

- 1) What governing body (or bodies) has the legal authority to make appointments to the CCTC?
- 2) How many appointments are made by the Colleton Senate Delegation, Colleton House Delegation, and Colleton Joint Legislative Delegation?
- 3) How many members are on the CCTC?
- 4) Who are its duly appointed members and when do their terms expire?

By way of background, in Tucker v. South Carolina Department of Highways and Public Transportation, 309 S.C. 395, 424 S.E.2d 468 (1992) (Tucker I), the Supreme Court found the provisions of Section 12-27-400, which required that a county legislative delegation approve the expenditure of the gasoline tax earmarked as "C" construction funds and allowed the delegation to contract for improvements, to be unconstitutional. The court found these provisions unconstitutional because the legislative delegates are only permitted to exercise legislative power as members of the General Assembly enacting legislation. By constitutional mandate, the legislature may not undertake both to pass laws and to execute them by bestowing upon its own members functions that belong to other branches of government. In addition, action by a legislative delegation pursuant to a complete law cannot qualify as action to enact legislation and is therefore invalid.

The General Assembly subsequently amended Section 12-27-400 to require that the county legislative delegation appoint a county transportation committee to oversee the expenditure of "C" funds. The constitutionality of the amended version of Section 12-27-400 was upheld by the court

in Tucker v. South Carolina Department of Highways and Public Transportation, 314 S.C. 131, 442 S.E.2d 171 (1994) (Tucker II). Thereafter, Section 12-27-400 was recodified as Section 12-28-2740.

#### Question 1

South Carolina Code Section 12-28-2740(B) provides that “[t]he county transportation committee must be appointed by the county legislative delegation and must be made up of fair representation from municipalities and unincorporated areas of the county.” Thus, applying the plain meaning of the statute, as must be done in the absence of ambiguity, the county legislative delegation possesses the legal authority under the statute to appoint the members of the transportation committee.

#### Questions 2 and 3

Again, under a plain reading of the statute, “the county legislative delegation” makes the appointments, and therefore, the joint legislative delegation would be the appropriate body to appoint all members of the committee. There is nothing in the “C-funds” statute which indicates that a county transportation committee must be comprised of a specific number of individuals, however. Further, it does not appear there is any limitation in the delegation’s ability to increase or decrease the number of individuals serving on the committee. In fact, it appears that the only statutory restriction placed on the legislative delegation’s appointment power is that the county transportation committee must reflect a “fair representation” of the county.

#### Question 4

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 provisions, the power of removal is incident to the power to appoint. In other words, the appointing power, where 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). However, removal for such unconstitutional reasons such as race or religion may be construed as a restriction on the removal power.

Section 12-28-2740 does not contain any provision setting forth a term of office for an individual appointed to the county transportation committee. Additionally, the statute contains no provision setting forth the power to remove an individual appointed to the county transportation committee. Therefore, in accordance with the general rule, the power to remove, in this instance, is incident to the power to appoint.

Other than the restriction on removal for unconstitutional reasons, there does not appear to be any other restriction upon the legislative delegation’s power to remove members of the

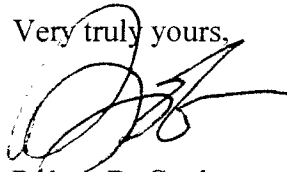
Senator Grooms  
October 9, 2000  
Page 3 of 3

transportation committee. Consequently, the legislative delegation may remove individual members or the entire membership of the transportation committee, if so desired. Indeed, Section 12-28-2740(O) states "Notwithstanding other provisions of this section, the legislative delegation of a county may by delegation resolution abolish the county transportation committee and devolve its powers and duties on the governing body of the county." Thus, in response to your question, the duly appointed members of the committee are those properly appointed by the legislative delegation, their terms have no specific length, and they may be removed at the discretion of the legislative delegation.

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

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be "Robert D. Cook", written over the typed name.

Robert D. Cook  
Assistant Deputy Attorney General