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CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 14, 1997

W. Brantley Harvey, Jr., Chairman
Beaufort County Transportation Committee
P.O. Drawer 1107
Beaufort, South Carolina 29901

Re: Informal Opinion

Dear Mr. Harvey:

Attorney General Condon has forwarded your opinion request to me for reply. You ask for an opinion on the powers and duties of the Beaufort County Legislative Delegation (hereinafter "BCLD") in constituting the Beaufort County Transportation Committee (hereinafter "BCTC"). Specifically, you ask whether the BCLD may terminate the members of the BCTC and appoint their replacements at any time and whether the BCLD may change the number of members sitting on the BCTC.

In 1993, the General Assembly amended S.C. Code Ann. § 12-27-400, commonly known as the "C-funds" statute. This was done in response to a Supreme Court decision which found that under former § 12-27-400, the county legislative delegation's role in determining how "C-funds" were to be spent was unconstitutional. Tucker v. South Carolina Department of Highways and Public Transportation, 309 S.C. 395, 424 S.E.2d 469 (1992). As a result of this amendment, county legislative delegations were to appoint county transportation committees. Section 12-27-400 was then recodified as § 12-28-2740 effective May 1, 1996. Section 12-28-2740(B) provides in pertinent part as follows: "[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."

There is nothing in the "C-funds" statute which indicates that a county transportation committee must be comprised of a specific number of individuals.


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Additionally, the "C-funds" statute does not specify the length of the term of membership for these individuals. Therefore, it does not appear that there would be a statutory restriction on the BCLD's ability to increase or decrease the number of individuals serving on the BCTC. Furthermore, there does not appear to be any statutory restriction on the BCLD's ability to terminate and/or replace a member of the BCTC at any time.¹ It appears that the only statutory restriction placed on the legislative delegation's appointment power is that the county transportation committee must be composed of a fair representation of the municipalities and unincorporated areas of the county.

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

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

¹ 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. 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). I note that removal for such unconstitutional reasons as race or religion may be construed as a restriction on the removal power.