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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 15, 1997

The Honorable John David Hawkins
Member, House of Representatives
314-A Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Hawkins:

Your recent opinion request has been forwarded to me for reply. In your request, you ask questions regarding the election of members to the Commission of the Department of Transportation.

The congressional districts of this State are constituted and created Department of Transportation districts of the State, designated by number corresponding to the numbers of the respective congressional districts. Section 57-1-310. The Commission of the Department of Transportation shall be composed of one member from each transportation district elected by the delegations of the congressional district and one member appointed by the Governor, upon the advice and consent of the Senate, from the State at large. *Id.* If a county is divided among two or more Department of Transportation districts, for purposes of electing a commission member, the county is deemed to be considered in the district which contains the largest number of residents from that county. Section 57-1-320(A).

The method of election for the district commissioner is found in Section 57-1-325. Legislators residing in the congressional district shall meet upon written call of a majority of the members of the delegation of each district for the purpose of electing a commissioner to represent the district. Section 57-1-325. A majority present, either in person or by written proxy, of the delegation from a given congressional district constitute a quorum for the purpose of electing a district commissioner. *Id.* No person may be

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elected commissioner who fails to receive a majority vote of the members of the delegation. Id. The delegation must be organized by the election of a chairman and a secretary, and the delegations of each congressional district shall adopt rules as they consider proper to govern the election. Id. Commissioners must be elected by the legislative delegation of each congressional district. Section 57-1-330. For the purposes of electing a commission member, a legislator shall vote only in the congressional district in which he resides. Section 57-1-330.

The statute provides that no county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided by the statute. Section 57-1-320(B). This Office has interpreted this section to mean that a county may have representation for one term and one term only, but that representation may return to that county after representation has rotated to another county for at least one term. Op. Atty. Gen. dated February 20, 1996. Because representation is to rotate, the commissioner may not succeed oneself but may serve again at a later date, when the rotation returns to his or her county (assuming re-election of the individual). Id.

Based on the information that you have provided, the fourth circuit of the South Carolina Department of Transportation is comprised of Spartanburg, Greenville, Union and part of Laurens County.¹ Apparently, for the last four years, the commission member has been a resident of Greenville County. Therefore, the next commission member must be a resident of another county within the congressional district. You ask whether Spartanburg County would have the sole authority to elect a highway commissioner for the next term.

The election of a new commission must be done in accordance with Section 57-1-325. Pursuant to this statute, no person may be elected commissioner who fails to receive a majority vote of the delegates within the congressional district. This means that in order to be elected, the commission member must receive a majority of votes from the delegates

¹ Since the population numbers for Laurens County have not been provided, this opinion makes no determination on whether the Laurens County Legislative Delegation would participate in the election of a commission member from district four. When a county is divided among two or more Department of Transportation districts, as Laurens County is, for the purposes of electing a commission member, the county is deemed to be considered in the district which contains the largest number of residents from the county. Section 57-1-320(A).

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of the congressional district, not just a majority of the votes from the delegates of the county where the commissioner is a resident. For example, an individual from Spartanburg County could be elected commissioner without receiving a majority of votes from the Spartanburg County Legislative Delegation by receiving a majority of votes from the delegates that comprise the congressional district as a whole. In other words, the vote of each member of the legislative delegations of a congressional district is of equal weight and importance in the election of the commission member.

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

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Assistant Attorney General