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The State of South Carolina



Office of the Attorney General

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December 15, 1993

Mr. Robert D. Hazel
Executive Director
South Carolina Business Education Partnership
1122 Lady Street, Suite 1005
Columbia, South Carolina 29201

Dear Mr. ^{R.D.}Hazel:

By your letter of December 8, 1993, you have requested the opinion of this Office on several matters, each of which will be addressed separately, as follows.

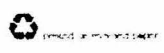
Question 1

A number of appointments to the South Carolina Business Education Partnership expire as of January 1, 1994. Should any member not be reappointed, or his (her) replacement not be appointed by January 1, 1994, may the incumbent member continue to serve until such time as the vacancy can be filled through the appointment process?

The Business-Education Partnership for Excellence in Education was created pursuant to S.C. Code Ann. § 59-6-15 (1976, as revised), with the membership prescribed by statute. Section 59-6-15 specifies that the term of office of the members is to be four years. No statutory provision is made for holding over past the end of one's term or until one's successor has been selected.

The absence of language relative to holding over notwithstanding, both the courts of this State and this Office have recognized the principle of law that an incumbent public official must hold over and serve as a de facto officer until his successor has been selected and qualified. Morris v. Scott, 258 S.C. 435, 189 S.E.2d 28 (1972); Bradford v. Bymes, 221 S.C. 255 (1952); Langford v. Board of Fisheries, 217 S.C. 118 (1950); Smith v. City Council of Charleston, 198 S.C. 313 (1941); Heyward v. Long, 178 S.C. 351 (1935). The purpose of the hold-over doctrine is to further the public interest in ensuring continuity

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in the operations of government and in provision of governmental services. See also Ops. Atty. Gen. dated July 17, 1984; November 14, 1988; October 28, 1988; and many others.

Considering the foregoing principles of law, we are of the opinion that should the terms of various members of the Business Education Partnership expire on January 1, 1994, without successors to those individuals having been appointed, the incumbents in question would continue to serve, holding over and serving as de facto officers, until their respective successors can be appointed.

Question 2

The Business Education Partnership wishes to adopt operating rules and procedures to assist in the governance of the body and requests any previous Attorney General opinions on public bodies promulgating operating rules.

The general ability of a deliberative body to adopt its own rules of procedure is discussed in 59 Am.Jur.2d Parliamentary Law § 2 et seq. and 67A C.J.S. Parliamentary Law, § 4 et seq., copies of which are enclosed. The ability of a deliberative body to modify its bylaws or rules of procedure is discussed in an opinion of this Office dated April 14, 1986, also enclosed. We trust that this information will be helpful.

If you have additional questions or need clarification, please advise.

With kindest regards, I am


Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions