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The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

February 14, 1994

Kenneth D'Vant Long, Director
South Carolina State Reorganization Commission
1105 Pendleton Street, Suite 228
Columbia, South Carolina 29201

Dear Mr. Long:

In a letter to this Office you questioned the constitutionality of the nomination process for the Board of Veterinary Medical Examiners as set forth in Senate Bill 258. Such legislation amends S.C. Code Section 40-69-30 to provide for nominations for the Board from each congressional district based upon elections within each district. More particularly, the bill provides for the referenced Board to be composed in part of six veterinarians representing each of the six State congressional districts. In subsection (B) it states:

> The board shall conduct an election to nominate two veterinarians from each congressional district. The election shall provide for participation by all veterinarians currently licensed and residing in the district for which the nomination is being made. The names of the nominees must be forwarded to the Governor by the board and the Governor shall appoint one of the nominees as the member.

The bill further provides for rejection of the nominees by the Governor and the submission of names of additional nominees.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

In Gold v. South Carolina Board of Chiropractic Examiners, 271 S.C. 74, 245 S.E.2d 117 (1978) the State Supreme Court invalidated a statute which restricted the Governor's authority to appoint members of the State Board of Chiropractic Examiners to only individuals who were members of the State Chiropractors' Association. The Court determined that such provision violated Article III, Section 1 of the State Constitution which prohibits the delegation of the appointive power to a private individual or organization. See also: Gould v. Barton, 256 S.C. 175, 181 S.E.2d 682 (1971). In Toussaint v. State Board of Medical Examiners, 285 S.C. 266, 329 S.E.2d 433 (1985), the Supreme Court construed S.C. Code Section 40-47-10 which authorized the State Medical Association to submit a list of its members to the Governor as nominees for appointment to the State Board of Medical Examiners. Citing Gold, the Court similarly concluded that such provision in mandating membership in the Medical Association as a prerequisite to membership on the referenced Board was an unconstitutional delegation of the authority of appointment to a private organization.

In Floyd v. Thornton, 220 S.C. 414, 68 S.E.2d 334 (1951) the Supreme Court upheld a statute which stated that three of the six members of the State Board of Bank Control were to be appointed by the Governor upon the recommendation of the State Bankers Association while two of the six members were to be appointed by the Governor upon recommendation of the State Savings and Loan Association. In Hartzell v. State Board of Examiners in Psychology, 274 S.C. 502, 265 S.E.2d 265 (1980) the Court construed the provisions of S.C. Code Section 40-55-30 which provided that members of the State Board of Examiners in Psychology were to be appointed by the Governor from a list of qualified candidates submitted by the State Psychological Association. The Court distinguished the method of appointment from Gold stating:

> Here, while a private body, the South Carolina Psychological Association, submits a list of qualified candidates to the Governor who ultimately appoints members to the Board of

> Examiners in Psychology, there is nothing on the face of this statute which requires a qualified candidate to be a member of the private body which compiles the list...

274 S.C. at 505. The Court found no unlawful delegation of the appointive power in such circumstances noting its prior holdings which "...approved the recommendation by private bodies with legitimate relationships to particular public offices of persons to fill those offices." 265 S.C. at 506.

Consistent with the decisions in Floyd and Hartzell it appears that the provisions of S. 258 setting forth the process for nominations from congressional districts are probably constitutional. There is lacking any restriction on the power of appointment to members of a private association of the kind determined in Gold to be unconstitutional.

With kind regards, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

CHR:jca

REVIEWED AND APPROVED BY:

Edwin E. Evans
Chief Deputy Attorney General

Robert D. Cook
Executive Assistant for Opinions