

The State of South Carolina

OS-5541
(CR: OS-5515)



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February 15, 1995

Timothy D. Harbeson, Esquire
General Counsel
Division of Foster Care Review
Office of the Governor
2221 Devine Street, Suite 500
Columbia, South Carolina 29205-2471

Re: Informal Opinion

Dear Mr. Harbeson:

By your letter of January 4, 1995, to Attorney General Condon, you have asked whether a local Foster Care Review Board member would be an "officer of the State or its political subdivisions such that the member may be suspended from service pursuant to the South Carolina Constitution Article VI, Section 8, if the member is indicted for a crime of moral turpitude. Article VI, Section 8 provides in relevant part: "Any officer of the State or its political subdivisions, ... who has been indicted by a grand jury for a crime involving moral turpitude ... may be suspended by the Governor until he shall have been acquitted. ..."

The local Foster Care Review Boards are created in each of the State's sixteen judicial circuits pursuant to S.C. Code Ann. §20-7-2385 (1993 Cum. Supp.). Members are appointed by the Governor upon recommendation of the county legislative delegation for four-year terms. The boards are responsible for reviewing the cases of children who have been in foster care for a period of more than four consecutive months, §20-7-2376, with reviews continuing every six months until the child leaves foster care. Duties of board members are set forth in §20-7-2376 and are explicitly made advisory in nature. The local boards must be distinguished from the board created pursuant to §20-7-2379, which board is a state-wide board, appointed by the Governor with the advice and consent of the Senate, which board reviews and coordinates the activities of the local review boards and makes recommendations to the General Assembly as outlined in the statute.

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Because the members of the local boards serve on a less than state-wide basis, as distinguished from members of the state-wide board created pursuant to §20-7-2379, it is extremely doubtful that they would be considered State officers.¹ See Op. Att'y Gen. dated September 18, 1991. It is also doubtful that members of the local boards would be considered officers of one of the State's political subdivisions. "A political subdivision is a division or subdivision of the State invested with governmental functions." Willis Construction Co., Inc. v. Sumter Airport Commission, 308 S.C. 505, 509, 419 S.E.2d 240 (Ct. App. 1992). The concept of "political subdivision" usually includes entities such as counties, municipalities, school districts, and special purpose or public service districts. See S.C. Code Ann. §15-78-30(h) and Article X, Section 14 of the South Carolina Constitution as examples.² The local boards are set up on the basis of judicial circuits, and the members thereof serve in an advisory capacity rather than exercising local governmental functions. Thus, members of local foster care review boards would not be

¹A "state officer" is sometimes defined as one who exercises a delegated portion of the sovereign power of the state, who holds "an office established by the constitution or by legislature," whose "powers and duties are coextensive with the state," and who is compensated by the state. 81A C.J.S. States §80.

²While South Carolina case law does not contain a complete and concise definition of the term "political subdivision," judicial decisions from other jurisdictions are instructive. In McClanahan v. Cochise College, 25 Ariz. App. 13, 540 P.2d 744 (1975), the term is so defined: "The attributes which are generally regarded as distinctive of a political subdivision are that it exists for the purpose of discharging some function of local government, that it has a prescribed area, and that it possesses authority for subordinate self-government by officers selected by it." 540 P.2d at 747. Similarly, in Arkansas State Highway Comm'n v. Clayton, 226 Ark. 712, 292 S.W.2d 77 (1956), is the following:

they embrace a certain territory and its inhabitants, organized for the public advantage and not in the interest of particular individuals or classes; that their chief design is the exercise of governmental functions; and that to the electors residing within each is to some extent committed the power of local government, to be wielded either mediately or immediately within their territory for the peculiar benefit of the people there residing.

considered either state officers or officers of a political subdivision for the purposes of Article VI, Section 8 of the State Constitution.

It is observed that §8-1-100 also permits the Governor, in his discretion, to suspend any state or county officer who is indicted in any court for any crime. However, for that Code section to be invoked, the officer must be a state or county officer. As previously discussed, a local foster care review board member would not be a state officer. Nor would that member be a county officer, since he or she is not exercising functions assigned to a county and his or her advisory board is exercising greater than county-wide jurisdiction. For similar reasons, the removal authority of §1-3-240 may not be invoked in this instance.

Should a member of a local foster care review board be indicted for and subsequently convicted of a crime, it is quite possible that the member may become ineligible for continued service on the board. All public officers must possess the qualifications of an elector, pursuant to Article I, Section 5 and Article VI, Section 1 of the South Carolina Constitution. McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947) (all officers, constitutional or statutory, elected or appointed, must be qualified electors). Section 7-5-120, S.C. Code Ann., as amended by Act No. 365 of 1994, specifies qualifications to be met for one to be an elector; subsection (B) provides that a person be disqualified from voting if he, inter alia,

(2) is serving a term of imprisonment resulting from a conviction of a crime; or

(3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

Disqualification as an elector disqualifies one from holding a public office. Op. Att'y Gen. dated August 3, 1984. Such disqualification is not stayed during the pendency of an appeal of the conviction. Op. Att'y Gen. No. 1940, dated November 8, 1965.

Conclusion

Because a local foster care review board member would not be a state officer or an officer of a political subdivision for purposes of Article VI, Section 8 of the State Constitution and would not be a state or county officer for purposes of §8-1-100, and further because other suspension statutes are specific to various criminal offenses or public

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officers, it appears that there is no authority for the Governor to suspend a member of a local foster care review board who would be indicted for the crime of kidnapping, which would be a crime of moral turpitude, Op. Att'y. Gen., dated February 9, 1995. Due to the egregious nature of such an offense and the lack of statutory authority for the Governor to suspend a local foster care review board member indicted for such an offense, perhaps legislation would be helpful to close this gap in the law.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General