

The State of South Carolina



Office of the Attorney General

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March 10, 1995

The Honorable Michael L. Fair
Member, House of Representatives
326-C Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Fair:

By your letter of March 3, 1995, to Attorney General Condon, you have asked whether gubernatorial appointees who are serving on a joint Senate and House Committee should be permitted to vote on matters before the committee, including the election of officers.

I have examined the statutes as presently codified relating to joint Senate and House committees with gubernatorial appointees, as well as joint resolutions dating back to 1969 as to the Joint Legislative Committee on Children. I have not found any statute or other legislative indication of whether the gubernatorial appointees should be permitted to vote on any matter, but neither have I found any limitation on the powers or duties to be exercised by the gubernatorial appointees.

The Constitution of the State of South Carolina is viewed as a limitation upon legislative power, rather than a grant of such power. Smith v. Robertson, 210 S.C. 99, 41 S.E.2d 631 (1947). I have not located any provision within the Constitution which would place limitations on the voting of gubernatorial appointees on the committees described above. The General Assembly could have placed limitations on voting by these committee members but has apparently chosen not to do so by statute (or joint resolution, in the case of the Joint Legislative Committee on Children).

In 59 Am.Jur.2d Parliamentary Law §3 it is stated that "[i]n the absence of the adoption of rules of procedure and in the absence of statutory regulation, the generally accepted rules of parliamentary procedure control. . . . If there is no specific, unambiguous

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statute or charter provision, resort may be had to Robert's Rules of Order for light on relevant parliamentary usages of deliberative assemblies."

In reviewing Robert's Rules of Order Newly Revised, in section 1, Robert describes a "member of an assembly, in the parliamentary sense" as "a person having the right to full participation in its proceedings--that is, ... the right to make motions, to speak in debate on them, and to vote." Robert observes that some organizations have classes of memberships, which classes may vary in their powers or rights. In examining the statutes as indicated above, I did not find a distinction between legislative members and gubernatorial appointees as far as the powers or rights to be exercised in carrying out the functions of the committees.

General law relative to the powers, duties, rights, and responsibilities of members of deliberative bodies is in accord with the parliamentary principles enunciated in Robert's Rules of Order. As stated in Farrell v. Board of Health, 243 App.Div. 332, 276 N.Y.S. 907 (1935), "[o]rdinarily, a membership on any board or body carries with it a right to vote. A restriction upon such power will not be extended beyond the limitation clearly intended to be imposed by the law, rule, or order creating the restraint." Farrell, 276 N.Y.S. at 909. Following that legal principle, this Office by an opinion dated June 26, 1979, concluded as to the chairman of the Horry County Ambulance District that he

has the same voting privileges as any other member on the Commission. Act No. 576 of 1971 provides that at the initial meeting of each year, each ambulance service commission will elect one of its members as Chairman. Therefore, the Chairman is a member of the commission, and "ordinarily, membership on an administrative board or body carries with it the right to vote." 73 C.J.S., Public Administrative Bodies and Procedures, §21, at 316 (1951).

I would also observe that, over the years, the General Assembly has created a number of boards or commissions or committees with certain members serving ex officio as representative of other boards. This Office has examined several such situations and has advised that an ex officio member of a board or commission would be a member of the board or commission for all purposes, with all of the rights, powers, duties, and responsibilities of any other member, including voting and being counted toward a quorum, unless such should be restricted by a specific statute. See Ops. Att'y Gen. dated March 4, 1976; December 22, 1981; and May 10, 1984. I believe that service on a board or commission by an ex officio member, with the attendant rights, privileges, powers, duties, and responsibilities, would be analogous to the situation you have presented. Certainly the General Assembly in either instance would have the authority to limit the

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participation of gubernatorial appointees or ex officio members of a board or commission, as that body would deem appropriate.

In addition to the general parliamentary and legal considerations, I have examined the language of joint resolutions relative to the Joint Legislative Committee on Children and offer the following observations. In H.1772 of 1969, the original committee was created, to consist of three members each of the Senate and House of Representatives and three gubernatorial appointees. The committee was directed by the resolution as follows:

The committee shall meet as soon as practicable after appointment and shall organize itself by electing one of its members as chairman and such other officers as the committee may deem desirable. Thereafter, the committee shall meet on the call of the chairman or a majority of the members.

Various joint resolutions through the years continued the committee, changed the name of the committee, appropriated funds for the committee, added to the responsibilities of the committee, and the like. I do not find that this language from the original joint resolution was amended, however. The language of the resolution does not restrict voting to only the legislative members, nor does it restrict the calling of a meeting to a majority of the legislative members; the language specifically calls for a "majority of the members" without further specification or limitation.

Because there do not appear to be limitations placed on the gubernatorial appointees by the General Assembly, at least by the statutes and joint resolutions which I examined in preparation of this informal opinion, I would conclude that the gubernatorial appointees would have a right and a responsibility to vote just as other members of the committee would on matters before the committee.

There may be matters of custom or tradition which are inherent in the conduct of business by such legislative committees as you have described. This informal opinion does not take any such matters of custom or tradition into account, as I have examined only legal and parliamentary issues.

The issue you have raised is one of parliamentary procedure, the determination of which rests with the committee itself, which committee is a legislative creature. Due to the doctrine of separation of powers, it would be inappropriate for this Office to opine on what ruling should be made by the appropriate presiding officer. The foregoing is intended to offer guidance without usurping the privilege of the presiding officer or the committee to rule thereon.

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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 question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

I trust that the foregoing has satisfactorily responded to your inquiry. Please advise if additional assistance or clarification should be required.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General