



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 20, 1996

The Honorable Thomas G. Keegan
Member, House of Representatives
434-B Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Keegan:

By your recent letter to Attorney General Condon, you asked that the conclusion of an informal opinion issued on September 20, 1995, to the Honorable Dick F. Elliott be reconsidered.¹ The referenced informal opinion concluded that the language of S.C. Code Ann. §57-1-320(B) (1995 Cum. Supp.) meant that a district commissioner of the South Carolina Department of Transportation could not serve consecutive terms but would be limited to serving one term only, unless another commissioner's term intervenes.

The standard of review of opinions of this Office is to determine whether such opinion is clearly erroneous. Upon review, I am of the opinion that the conclusion of the opinion of September 20, 1995, is not clearly erroneous. I would offer the following as additional reasoning to bolster the conclusion reached therein.

Your letter suggested that if the General Assembly had intended to limit commissioners of the Department of Transportation to one term, as my earlier opinion concluded, the language of §57-1-320 might have read "no ... more than one term" but the statute instead reads "no ... more than one consecutive term." Your letter also points out that the statutes governing the former appointment procedure of highway commissioners (particularly old §57-3-240) provided that commissioners under that procedure contained

¹The referenced opinion also considered an issue relative to a future appointment to be made to the State Board of Education. You have not asked that the conclusion as to that issue be reconsidered.

The Honorable Thomas G. Keegan

Page 2

February 20, 1996

a requirement that unanimous consent be obtained from the affected delegation members in order for a commissioner to succeed himself; the unanimous consent requirement has been eliminated and the new statutes would permit successive terms, limiting the successive terms to one, you would therefore argue.

I am of the opinion that the language in §57-1-320(B) relative to not serving more than one consecutive term means serving one term. By way of comparison, a municipal ordinance examined in Great South Fair v. City of Petal, 548 So.2d 1289 (Miss. 1989), provided that a carnival or fair with the specified number of mechanical rides could operate "not more than one (1) consecutive day" in the city. The ordinance challenged therein was interpreted to mean that the carnival or fair could operate for only one day. Applying that reasoning to the instant case, I would interpret the language of §57-1-320(B) 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. Because representation is to rotate from county to county, the commissioner may not succeed oneself but may serve again at a later date, when the rotation returns to his or her county (assuming the delegations were to re-elect the individual).

As you pointed out, former §57-3-240 provided that a commissioner might succeed himself upon unanimous consent of the affected legislative delegations. No such provision is made in the new appointment statutes. Indeed, the language of §57-1-320, if anything, seems to be more restrictive. It could be argued equally reasonably that since no provision is now made for succeeding oneself, such cannot be done.

It is also observed that §57-1-330 was amended in 1995 by Act No. 120, to provide that commissioners of the Department of Transportation may not serve in a hold-over capacity, after their respective terms expire, for a period exceeding six months. Arguably, this provision would prevent the evasion of the rotation system; otherwise, the affected delegations could simply refuse to make the appointment to the commission of the Department of Transportation for an extended period of time, effectively permitting the incumbent commissioner to remain in office in a hold-over capacity for an extended or indefinite period of time. If such indefinite holding over were permitted, the net result would be succession in office without the benefit of official election, thus taking an action indirectly which could not be taken directly.

The opinion of September 20, 1995, considered in depth the concept of "term of office" and the interpretation given to the concept when a board or commission has been newly created with a staggered scheme of appointment. The conclusion reached therein that one who would serve an initial term of two years would be considered to have served a complete term as contemplated by the enabling legislation is consistent with prior

The Honorable Thomas G. Keegan

Page 3

February 20, 1996

opinions of this Office. See Ops. Att'y Gen. dated October 18, 1988; August 16, 1985; and March 30, 1965. Again, as stated in the opinion of September 20, 1995, the legislature has not made any provision or exception for those serving a two year term to be reappointed in a consecutive manner or for the counties of which those members are residents to have representation for another, consecutive, four-year term after the expiration of the members' initial two-year terms.

I am still of the opinion that the obvious legislative intent was to place a limitation on the number of terms that a commission member may serve on the commission, namely, one. This legislative intent would be effectuated by limiting the designated appointive members of the initial commission to serve either their two year term or four year term, as may be appropriate depending on which congressional district they represent. While a commissioner representing one of the congressional districts may therefore not succeed himself, certainly at some time in the future that individual would be eligible to serve another non-consecutive four year term on the commission when the rotation returns to his or her county.

This letter is an informal opinion only. It has been written by a designated Senior 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 am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:


Zeb C. Williams, III
Deputy Attorney General

CC: The Honorable Dick Elliott