

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 20, 1996

The Honorable Michael T. Rose  
Senator, District No. 38  
506 Gressette Building  
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Rose:

By your letter of February 14, 1996, to the Office of Attorney General Condon, you have requested an opinion as to interpretation of certain statutes governing the composition of the Commission of the South Carolina Department of Transportation. You have advised that the term of the commissioner of the Department of Transportation representing the First Congressional District appears to expire on February 15, 1996. Two questions have arisen as to this individual:

1. Whether this individual can be reappointed to his current position for an additional term during part or all of the four years immediately following the expiration of his current term on February 15, 1996.
2. Whether this individual can be in holdover status more than six months after the expiration of his four year term<sup>1</sup> on February 15, 1996.

Each of your questions will be addressed separately, as follows.

---

<sup>1</sup>Your letter characterized this individual's term as a four year term; it is more probable that the term is a two year term since the individual is representing the First Congressional District. See S.C. Code Ann. §57-1-330(B)(1) (1995 Cum. Supp.).

Several statutes require consideration to resolve these issues. One of those statutes is S.C. Code Ann. §57-1-310 (1995 Cum. Supp.), which provides in relevant part:

The congressional districts of this State are constituted and created Department of Transportation districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The Commission of the Department of Transportation shall be composed of one member from each transportation district elected by the delegations of the congressional district and one member appointed by the Governor upon the advice and consent of the Senate, from the State at large. ...

Then, certain limitations on representation of the various counties are expressed in §57-1-320(B): "No county within a Department of Transportation district shall have a resident commission member for more than one consecutive term and in no event shall any two persons from the same county serve as a commission member simultaneously except as provided hereinafter." (Emphasis added.)

The procedure by which the delegations meet to elect the district commissioner is specified in §57-1-325; the final sentence of that section provides: "Each commissioner shall serve until his successor is elected and qualified." Undoubtedly, that provision is to prevent a lapse in the governance of the Department of Transportation. As stated in Bradford v. Byrnes, 221 S.C. 255, 262, 70 S.E.2d 228 (1952), "As nature abhors a void, the law of government does not ordinarily countenance an interregnum." The holding over is not without limits, however. By Act No. 120 of 1995, §57-1-330(A) was amended to make certain that such holding over would be limited to only six months: "Commissioners shall continue to serve until their successors are elected and qualify, provided that a commissioner may only serve in a hold-over capacity for a period not to exceed six months." (Emphasis added.)

One final statute to be considered is §57-1-330, which provides in relevant part:

(A) Beginning February 15, 1994, commissioners must be elected by the legislative delegation of each congressional district. ... All commission members must serve for a term of office of four years which expires on February fifteenth of the appropriate year. Commissioners shall continue to serve until their successors are elected and qualify, provided that a commissioner may only serve in a hold-over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by election in the manner provided in this article for the unexpired term only. ...

(B) The terms of the initial members of the commission appointed from congressional districts are as follows:

- (1) commission members appointed to represent odd-numbered congressional districts--two years; and
- (2) commission members appointed to represent even-numbered congressional districts--four years.

....

The individual about whom you are inquiring represents the First Congressional District; thus, his term would expire on February 15, 1996.

The cardinal rule of statutory interpretation is to ascertain and effectuate legislative intent whenever possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). An unambiguous statute will be given effect according to the clear meaning of its language. Citizens and Southern Systems, Inc. v. S.C. Tax Commission, 280 S.C. 138, 311 S.E.2d 717 (1984); Helfrich v. Brasington Sand & Gravel Co., 268 S.C. 236, 233 S.E.2d 291 (1977). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). In construing a statute, all provisions must be given force and effect if at all possible. Bradford v. Byrnes, *supra*. Statutes in apparent conflict must be read together and reconciled if possible so as to give meaning to each and to avoid an absurd result. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984).

The phrase "term of office," as used in §57-1-330, connotes a fixed and definite period of time. See 63A Am.Jur.2d Public Officers and Employees §66. Accord State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948); State ex rel. Rushford v. Meador, 267 S.E.2d 169 (W.Va. 1980). In §57-1-330, the General Assembly distinguishes between the terms of office of the members appointed to the initial commission and those members appointed after the initial commission. The term of office for the members of the initial commission are specifically designated as two years for members from the first, third, and fifth congressional districts, and four years for the members from the second, fourth, and sixth congressional districts; the member at large is to serve at the pleasure of the Governor, potentially a four year term if that individual should serve coterminously with the Governor.<sup>2</sup>

---

<sup>2</sup>The conclusion that one who would serve an initial two year term thus having served a complete term has been expressed repeatedly in opinions of this Office. See Ops. Att'y Gen. dated October 18, 1988; August 16, 1985; and March 30, 1965.

The Honorable Michael T. Rose

Page 4

February 20, 1996

A further consideration is that §57-1-320(B) prohibits a county within a transportation (congressional) district from having a resident commission member for more than one consecutive term. The issue thus becomes whether or not the two year term of office of a member appointed to the commission from the First, Third, or Fifth district would be a "term" within the proscription of §57-1-320(B). It would appear that the legislature contemplated that a two year term for certain of the initial appointees be a full or complete term. Similarly, after the initial commission is appointed, the terms of office for subsequent commission members would be full or complete four year terms. 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 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).

I also observe that former §57-3-240, one of the statutes under which the former Department of Highways and Public Transportation was organized, permitted a commissioner to succeed oneself 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 that since no provision is 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. This provision appears to 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

The Honorable Michael T. Rose  
Page 5  
February 20, 1996

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.

Considering all of the foregoing, it appears that the legislative intent was to place a limitation on the number of terms that a county (and hence a commissioner) 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.

For these reasons, I am of the opinion that members of the initial commission of the Department of Transportation appointed to represent the First, Third, and Fifth congressional districts who were elected by their respective legislative delegations to serve for terms of office of two years would not be eligible to serve an additional, consecutive, four year term of office. Section 57-1-320(B) contemplates that the next appointment would be made from another county within the congressional district, on a rotating basis. Certainly, at some time in the future, those members serving the initial two years terms would be eligible to serve another non-consecutive four year term on the commission when the rotation contemplated by §57-1-320(B) returns to their respective counties. In so concluding, I affirm the conclusion of an informal opinion issued on September 20, 1995, to the Honorable Dick Elliott to the effect that a commissioner of the South Carolina Department of Transportation representing the First Congressional District, having served an initial two-year term, would not be eligible to succeed himself; §57-1-320(B) would contemplate that the next appointment be made from a different county within the First Congressional District.

Further, I am of the opinion that the plain language of §57-1-330(A) restricts an individual's period of holding over to not more than six months.

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.

The Honorable Michael T. Rose  
Page 6  
February 20, 1996


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