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September 11, 1991

Mr. Louis L. Rosen, Director
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

Dear Mr. Rosen:

In a letter to this Office you referenced that in late May, 1991 Governor Campbell forwarded to the Senate for its confirmation a number of magisterial appointments. Such is consistent with Article V, Section 26 of the State Constitution which provides "(t)he Governor, by and with advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law." You stated that printed Journals of the Senate did not reflect confirmation of many of the appointments. However, according to your letter, a "corrected and reprinted" Journal was issued June 6, 1991 noting confirmation. You further state that initials or signatures of Senatorial delegations are noted on each of the confirmation letters of the Governor. In mid-June the Clerk of the Senate forwarded letters to the Governor notifying him of the appointments. You have asked whether further action needs to be taken before new magistrates assume office. Also, you questioned whether magistrates who were to be replaced may be advised that they no longer hold office.

As to the matter of the Journals of the Senate, it has been stated that

> ... the recitals in the Journals of the Legislature are conclusive. They are entitled to absolute verity, and cannot even be impeached on the ground of mistake or fraud. If there are errors in them, the House ... (in this case the Senate)... itself is the only tribunal authorized to correct them.

State ex re rel. Thompson, Atty. Gen., et al. v. Dixie Finance Co., 278 S.W. 59 at 61 (Tenn. 1925).

Such is consistent with the "enrolled bill rule" relating to enactments of the General Assembly.1/ Absent a rule of this kind, virtually every action of the General Assembly could be questioned or impeached, thus creating chaos. Of course, as to any question of fact, such as that involving a question of confirmation, this Office is not authorized to make such factual determinations. See, Op. Atty. Gen., February 5, 1987. Nevertheless, applying the foregoing rules of construction, it would appear that in this instance confirmation of the magistrates by the Senate was made.

Such confirmation having been made, I am informed that typically upon notification of the Governor by the Senate of confirmation of an office, the commission process is

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1/ In State ex rel. Richards v. Moorer, 152 S.C. 455, 150 S.E. 269 (1929) the Supreme Court stated:

> We announce that the true rule is, that when an Act has been duly signed by the presiding officers of the General Assembly, in open session in the Senate-House, approved by the Governor of the State, and duly deposited in the office of the Secretary of State, it is sufficient evidence, nothing to the contrary appearing upon its face, that it passed the General Assembly, and that it is not competent either by the journals of the two houses, or either of them, or by any other evidence, to impeach such an Act. And this being so, it follows that the Court is not at liberty to inquire into what the journals of the two houses may show as to the successive steps which may have been taken in the passage of the original bill.

152 S.C. at 467.

then instigated.2/ This process includes the signing of oaths of office by the individuals appointed and the issuance of commissions. See, Op. Atty. Gen., July 17, 1989, see also, §8-3-10 {a public officer must be properly commissioned}.

In this instance, since the Governor has already designated his appointees, and since the journals reflect the Senate's action and cannot be impeached, we see no legal impediment to the Governor's now informing officially the Secretary of State that his appointments, confirmed by the Senate, have now been made. See, Marbury v. Madison, 2 L.Ed. 60 at 67. I am informed that the Governor has stated by letter that, upon resolution of the confirmation question, raised in your letter and addressed herein, this process will ensue in the usual fashion noted above. As soon as that occurs, the newly appointed magistrates can assume office de jure and the magistrates who were deemed to be replaced would no longer continue in office. Of course, as to any new magistrates who have already assumed office, they would be deemed to have been serving de facto, and all actions taken pursuant to their color of authority would be deemed valid and binding. State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 300-309, 223 S.E.2d. 166 (1976).

With kind regards, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

CHR:gmb

REVIEWED AND APPROVED BY:

ROBERT D. COOK
Executive Assistant for Opinions

2/ In State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936), the Supreme Court noted that

> ... the commission does not confer the office nor the term or time for which it exists depends upon the commission, which is only evidence of the appointment or election.

181 S.C. at 37.