

The State of South Carolina



Office of the Attorney General

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January 17, 1990

Kevin M. Barth, Esquire
Harwell, Ballenger, DeBerry
Post Office Box 107
Florence, South Carolina 29503

Dear Mr. Barth:

On behalf of the Pee Dee Regional Transportation Authority, you have referenced Section 58-25-40(1) of the South Carolina Code of Laws (1976, as amended) and have advised that because the Authority receives funds from the general fund and/or the highway fund, the Authority must have the three additional appointees as mandated by the statute on its governing body. You have inquired as to how the delegations are to appoint these members, how the members are to be appointed among the counties, and so forth.

Section 58-25-40(1), second paragraph, provides in relevant part:

As many as three additional members of the governing board of a transportation authority may be appointed by the legislative delegations of the member counties if approved by the qualified electors within the proposed service area in accordance with the procedures set forth in Section 58-25-30. If the authority receives a grant of the state funds from the general fund or the highway fund, the delegation shall appoint three additional members. Unless the agreement approved by the qualified electors of a service area provides otherwise, the members of the governing board appointed by the delegation must be apportioned as determined by a majority of the delegation members including the resident senator. ...
[Emphasis added.]

Mr. Barth
Page 2
January 17, 1990

Applying the plain and literal meaning of the language of the statute, as must be done in the absence of ambiguity, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980); State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982), we would advise as follows:

1. If the agreement approved by the qualified electors provides for selection and apportionment of the members to be appointed by the legislative delegations comprising the service area of the Authority, the agreement should be followed.

2. In the absence of such agreement, it would appear that the delegations of the counties involved in the Authority would act jointly to select the three additional members. A majority of the delegation members, acting jointly, would determine how the three additional members would be apportioned. The procedure which would be used to select the members is not specified by statute and would thus be within the discretion of the joint delegations.

Because there is no specified procedure for selection of these three members in the absence of the agreement referenced above, you may wish to advise your local legislative delegation of the need to have the additional members appointed and work with the legislators to accomplish that goal.

With kindest regards, I am

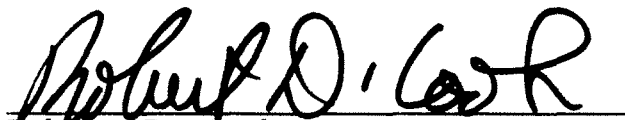
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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