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September 14, 1990

Mr. Cartha D. DeLoach, Chairman  
Public Service Merit Selection Panel  
50 Gull Point Road  
Hilton Head Island, South Carolina 29928

Dear Mr. DeLoach:

At the request of Alan L. Pollack, Ph.D., Assistant Executive Director of the Public Service Merit Selection Panel, this Office has been asked its opinion on the procedures to be followed to fill a vacancy on the Public Service Commission, such vacancy having arisen due to the death of a commissioner. The question is novel and one of first impression, as no precedent for this situation has been set since creation of the Merit Selection Panel in 1979.

By way of background, we note that the commissioner in question represented the Sixth Congressional District on the Public Service Commission. She was re-elected during the 1990 legislative session to serve another four-year term, having served previously on the Commission since 1980; thus, a considerable portion of her term remains. At the time the vacancy occurred, the General Assembly was not in regular or special session.

By Act No. 167, 1979 Acts and Joint Resolutions, the procedure to select members of the Public Service Commission was revised by the creation of the Merit Selection Panel and the establishment of the screening process by the Merit Selection Panel. Nomination of candidates for election to the Public Service Commission is governed by Section 58-3-23 of the South Carolina Code of Laws (1989 Cum. Supp.), which provides in relevant part:

Whenever a vacancy shall occur on the Public Service Commission ... by reason of expiration of a term or otherwise, ... the Merit Selection Panel shall submit to the General Assembly while in regular or special session the names of two

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persons qualified as candidates to fill such vacancy .... If the General Assembly is not in regular or special session when such vacancy occurs, the Merit Selection Panel shall submit such names in the same manner as herein provided to the General Assembly at the beginning of its next regular or special session....

The sweeping amendments to the selection process made by Act No. 167 of 1979 left intact the provisions of Section 58-3-30 of the Code, which states in part: "The Governor may fill vacancies in the office of commissioner until the successor in such office for a full term or an unexpired term, as the case may be, shall have been elected by the General Assembly." Thus, the continued viability of Section 58-3-30 in light of the changes in the selection process in Section 58-3-23 must be examined.

In construing statutes such as these, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent whenever possible. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if such can be done by any reasonable construction. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). Repeal of a statute by implication is disfavored; such will be resorted to only in case of irreconcilable conflict. If there is any way to construe such statutes together so that both can stand, the courts and this Office will so construe them. In Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980).

In establishing the Merit Selection Panel and the merit selection process, the General Assembly in Act No. 167 of 1979, section 1, desired to "improve the effectiveness of the [Public Service] commission, to strengthen the public's confidence that its interests are being properly monitored and protected and to insure equitable rates for utility services without endangering the financial stability of the suppliers of services." The General Assembly charged the Merit Selection Panel in Section 58-3-23 to "endeavor to select the most qualified persons for each vacancy" and further in Section 58-3-25 to "seek to find the best qualified people giving due consideration to their ability and integrity." The screening process obviously takes time and, in any event, the election of the commissioner's successor by the General Assembly cannot take place until the legislature returns to a regular or special session; the next regular session is scheduled to begin on January 8, 1991.

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Nowhere in Act No. 167 of 1979 or in subsequent amendments to the Public Service Commission was Section 58-3-30 repealed or otherwise amended. Several proposed amendments to Section 58-3-30 were offered, but apparently none was adopted. See 1979 S. C. House J. I 2060 (amendment no. 86); id. at 2028 (amendment no. 79); and id. at 1836 (amendment no. 16), as examples. Still other proposed amendments left Section 58-3-30 intact. See 1979 S. C. House J. I 2070 (amendment no. 93, adopted May 17, 1979); and id. at 2030 (amendment no. 83), as examples. In spite of the dozens of proposed amendments, however, Section 58-3-30 survived without modification.

Considering the foregoing legislative history and the rules of statutory construction, it is possible to effectuate the provisions of both Sections 58-3-23 and 58-3-30 without creating an irreconcilable conflict. The Governor could appoint an interim commissioner until the successor could be elected by the General Assembly to fill the unexpired term of the deceased commissioner. The term of the interim commissioner would expire upon the election of the successor by the General Assembly and the successor's qualification by taking the oath of office required by Section 58-3-30 and by taking any other steps necessary to qualify. In the meantime, the Merit Selection Panel might begin the screening process to be able to submit the names of qualified candidates to the General Assembly at the beginning of its next regular or special session, pursuant to Section 58-3-23 et seq. Such a reading also permits the Public Service Commission to continue its operations unimpeded by a vacancy on the Commission, in keeping with the principle enunciated in Bradford v. Byrnes, 221 S.C. 255, 262, 70 S.E.2d 228 (1952), that "[a]s nature abhors a void, the law of government does not ordinarily countenance an interregnum."

Such an interpretation would seem to be consistent with the terms of Act No. 223 of 1979, which provides in section 1:

Notwithstanding the provisions of Sections 58-3-10 and 58-3-30 of the 1976 Code, beginning with the effective date of this act and until July 1, 1980, members of the Public Service Commission whose terms expire in 1979 shall continue to serve until their successors are selected and qualify and vacancies created for reasons other than the expiration of terms may be filled by appointment of the Governor to serve until such appointees' successors are selected. Provided, that no member whose term expires in 1979 shall serve any longer than July 1, 1980, unless reelected.

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This act took effect upon approval of the Governor on July 4, 1979, whereas Act No. 167 took effect July 1, 1979 (according to section 8 of that act, though such act was not approved until July 18, 1979). Act No. 223 of 1979 was an express recognition of the continued viability of Section 58-3-30 and the Governor's continued power to appoint a successor in some instances; the act was indeed necessary to prevent the Governor's exercise of interim appointment power to fill vacancies due to expiration of terms of office in 1979, such act permitting him to fill vacancies only for reasons other than expirations of terms.

Based on the foregoing, it is the opinion of this Office that pursuant to Section 58-3-30 the Governor is authorized to make an interim appointment to fill the vacancy on the Public Service Commission, such appointment expiring upon the election of the deceased commissioner's successor by the General Assembly and the successor's qualification. The Merit Selection Panel is authorized to begin the selection process outlined in Section 58-3-23 et seq., to submit names of qualified candidates to the General Assembly when that body returns to its next regular or special session.

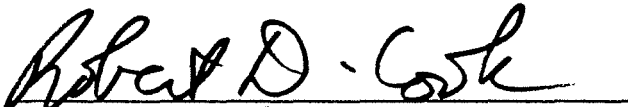
With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

cc: Mark R. Elam, Esquire  
Senior Counsel to the Governor

Alan L. Pollack, Ph.D.  
Assistant Executive Director  
Public Service Merit Selection Panel