

# The State of South Carolina

OS-4393  
LIBRARY



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-8283

February 26, 1991

The Honorable Grady A. Brown  
Member, House of Representatives  
432C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Brown:

You have requested that this Office clarify the term of appointment for one of the members of the Lee County Development Board (hereinafter, Board). This Office has been provided with the minutes of the November 12, 1986 Board meeting, the Lee County ordinance pertaining to Board member appointment and terms of office, and a November 10, 1986 letter which purports to confirm appointment of the member to the Board from November 10, 1986, until January 31, 1992. Without commenting upon the propriety of the appointment of the individual in question or the appropriate dates of the term, this Office concludes that the term of office would not exceed four years.

The Lee County Development Board, formerly the Lee County Industrial Planning Board, was originally created by Act No. 841, 1958 Acts and Joint Resolutions. The original Board was composed of five specific ex officio members and five citizen members appointed by the Governor upon recommendation of the senator and representative from Lee County. The act provided that each board member would be appointed to serve a term of four years. See § 14-400.391 to 14-400.396 of S.C. Code Ann. 1962. In 1973, § 14-400.391 of the 1962 Code was amended to provide that the Lee County Development Board would be composed of five members to be appointed by Lee County Council to serve for terms of four years each. In 1979 and by ordinance number 7.101 of Lee County Council, the Board was recreated as permitted under the Home Rule Act. See S.C. Constitution Art. VIII, § 7; S.C. Code §§ 4-9-170 (With certain exceptions and beginning January 1, 1980, the county shall provide by ordinance for the appointment of all county boards whose appointment is not provided for by general law or the Constitution) and 4-9-25 (The counties have the authority to enact ordinances not inconsistent with the general

The Honorable Grady A. Brown  
Page 2  
February 26, 1991

law of the State or the Constitution). See also Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976) (The General Assembly retains until January 1, 1980 the power to appoint members to all county boards); Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) (On January 1, 1980, counties may enact ordinances which conflict with law concerning local matters previously passed and counties have the option of continuing a board as previously provided prior to Home Rule or to otherwise provide for by ordinance). The ordinance still in effect provides for a seven member Board to be appointed one each upon recommendation by the seven district county council members to serve for a term of four years.

The minutes of the November 12, 1986 Board meeting indicate that the individual in question had been newly appointed. A review of the appointment letter to the Secretary of State reveals that it emanates from a source other than county council. County Council was made the appropriate appointing authority in the 1973 amendment to S.C. Code Ann. 14-400.391 of 1962 Code and again in the local recreation of the Board in 1979. An appointment to Office is valid and complete upon

... some open unequivocal act of appointment on the part of the appointing authority empowered to make it ...

67 C.J.S. Officers § 40, p. 310 (Emphasis added). Therefore, the letter at issue here would have no binding effect upon an appointment by the appropriate County Council member because it was not an act by the authority empowered to make the appointment to the Board.

The letter also indicates that the member was appointed to serve a term greater than four years. The ordinance which presently governs the terms of Board members specifically limits all terms to four years. In fact, the terms have been limited to four years since the creation of the Board in 1958. The appointment for a term for more than four years is not binding because it is in excess of that prescribed by law with respect to the office. The provisions of the act creating the office control the term of an office, not an incorrect statement on the face of a document. Jeter v. State, 12 S.C.L. 233 (1821); Macoy v. Curtis, 14 S.C. 367 (1880); State ex rel Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936); See also 67 C.J.S. Officers §§ 66, 69; 63A Am.Jur.2d Public Officers and Employees, § 155.

... (W)here a statute defines a fixed term ... it is the statutory term that takes precedence when a different term is specified in the actual nomination by the appointing officer.

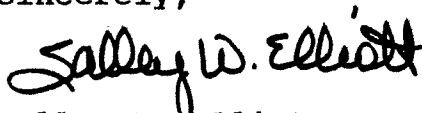
63A Am. Jur.2d Public Officers and Employees, § 155, p. 783.

The Honorable Grady A. Brown  
Page 3  
February 26, 1991

It is the opinion of this Office that, if the individual in question was appropriately appointed by the County Council member from the requisite district to fill an initial term and full term, the term would not exceed four years. Reliance upon the letter issued with respect to the office of the individual in question would be misplaced because it was issued by an authority and for a term which have not been prescribed by the law which governs the Board.

If you have any questions concerning this matter, please advise.

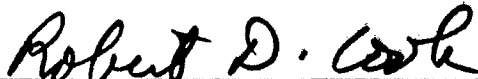
Sincerely,



Salley W. Elliott  
Assistant Attorney General

SWE/an

REVIEWED AND APPROVED BY:



Robert D. Cook  
Robert D. Cook  
Executive Assistant for Opinions