

The State of South Carolina



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April 29, 1992

The Honorable Joe Wilson
Senator, District No. 23
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Wilson:

You ask for the opinion of this Office whether S.C. Code Ann. Section 43-33-330 provides a limit of terms for all members of the South Carolina Protection and Advocacy System or only for those members appointed by the Governor. It is the opinion of the Office that the statute provides a limit to two successive four-year terms for appointed Board members only.

Act No. 48 of the 1979 Acts and Joint Resolutions which created the South Carolina Protection and Advocacy System provided originally as to board members that

The South Carolina Protection Advocacy System for the Handicapped, Inc., shall be governed by a board consisting of twelve members appointed by the Governor, with the advice for terms of three years ... No board member shall serve more than two successive three year terms.

The statute was amended by 1989 Act No. 145 to provide for four additional members elected from advisory councils or boards. The amendment also increased the terms of board members to four years, deleted the advice and consent of the Senate for appointment of appointed board members, and limited appointed board members to two consecutive terms. Act No. 52 of 1991 changed the composition of the board and the manner in which the members are elected as follows:

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The South Carolina Protection and Advocacy System for the Handicapped, Inc., is governed by a board consisting of a minimum of twelve members and maximum of sixteen members. Four members must be appointed by the Governor, one member from each of the system's four regions. Eight members must be elected by the board upon recommendation by the system's nominating committee which shall consult with advocacy groups of the State representing persons with handicaps. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the original manner for the unexpired portion of the term. A vacancy must be filled no later than sixty days after the date on which the vacancy occurs. Up to four members who serve as chair of advisory councils or committees to the system may be elected by the board to serve ex officio as considered appropriate to the needs of the system or as mandated by law. No appointed board member may serve more than two successive four-year terms. (Emphasis added)

In interpreting a statute the intention of the legislature is the paramount consideration and where the terms of a statute are clear and unambiguous, the literal meaning should be applied. Wright v. Colleton County School District, S.C. , 391 S.E.2d 564 (1990); First South Savings Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (S.C.App. 1990); Chestnut v. S.C. Farm Bureau Mutual Ins. Co., 298 S.C. 151, 378 S.E.2d 613 (S.C. App. 1989); Spires v. Spires, 296 S.C. 422, 373 S.E.2d 698 (S.C. App. 1988). Also, when the legislature amends a statute it is presumed to have intended to make a change in the law. Vernon v. Harleysville Mutual Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964). Lindsay v. Main Ins. Co., 281 S.C. 331, 315 S.E.2d 166 (S.C. App. 1984).


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In reviewing the amendments made by the General Assembly to S.C. Code Ann. Section 43-33-330 it appears that originally all board members were appointed by the Governor and those appointed members were limited to two successive terms. As Section 43-33-330 was amended to provide for appointed and elected members, the language limiting successive terms was retained but was made applicable strictly to appointed board members. Based upon the legislative history and the terms currently employed by the General Assembly in Section 43-33-330, it is the opinion of this Office that the statute clearly and unambiguously states that appointed members only shall be limited to two successive terms.

You also ask whether the statute should be amended to conform membership if there is a distinction between elected and appointed members. Generally, the legislature may establish the term of office unless otherwise provided for in the constitution. 63A. Am. Jur.2d, Public Officers § 155. Based upon the powers and duties prescribed by statute for the South Carolina Protection and Advocacy System, it appears that resolution of this question would be a matter of policy.

I hope that I have sufficiently answered your questions. Please contact me if additional information is needed.

Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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