

The State of South Carolina



Office of the Attorney General

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March 30, 1992

The Honorable D. N. Holt, Jr.
Chairman, Charleston County
Legislative Delegation
2 Courthouse Square, Room 307
Charleston, South Carolina 29401

Dear Representative Holt:

You have requested the opinion of this Office as to "the legality of the Charleston/Dorchester Community Mental Health Center transferring one appointment from Charleston County to Dorchester County." A letter from the chairman of the Center, dated February 25, 1992, expresses the governing body's view that a vacant seat "should rightfully be filled by someone from Dorchester County. This change in county assignment was effected by a recent increase in Dorchester County Council appropriations to the Center."

The statute establishing community mental health centers and providing for membership on the governing body is S.C. Code Ann. § 44-15-60 (1991 Cum. Supp.). In relevant part, the statute provides: "The number of members representing each county must be proportional to its share of the budget." Members are to be appointed for four-year terms, with vacancies to be filled "for the unexpired term in the same manner as original appointments." 1/ Id. This statute does not provide a means for determining when or how changes are to be effected when the proportion of funding changes, however.

1/ By the county legislative delegation or county council, as appropriate. See § 44-15-60.

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Political subdivisions would establish annual budgets and determine appropriations to their community mental health centers on an annual basis. The amount of appropriation from a given political subdivision, and its proportion to the total appropriated to a specific mental health center, obviously could vary from year to year. At least in theory, a board might be composed disproportionately, from year to year, depending on the current appropriations.

The resolution of this question would appear to be a matter of policy rather than a matter of law. One possible way to ensure that § 44-15-60 is being followed as closely as is possible would be to have the chairman of the mental health center board notify the appropriate legislative delegations 2/ representing the political subdivisions comprising the center that a vacancy has occurred. The chairman could advise the delegations of the current budget and the amounts (i.e., proportions) contributed from each county. If it should be deemed necessary to transfer an appointment (membership) to another county, then each or all of the affected legislative delegations would be informed. This is only one suggestion, however, and there could easily be other suggestions which would work equally well.

As the question is one of policy rather than a legal question, we hope that the foregoing will give you as sufficient guidance as is possible under the circumstances.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

2/ Or county councils, if appropriate. See
§ 44-15-60.