

The State of South Carolina



Office of the Attorney General

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August 10, 1992

The Honorable Marshall B. Williams
Senator, District No. 40
Post Office Box 1084
Orangeburg, South Carolina 29116

Dear Senator Williams:

You have asked that our Office clarify the relationship of regional housing authority statutes to the Home Rule Act. In particular, you have questioned whether the provisions of the Home Rule Act, Act No. 283 of 1975, may have impliedly amended the statutes relative to appointment of regional housing authority commissioners.

Appointment of regional housing authority commissioners is governed by S.C. Code Ann. 31-3-960, which provides:

The Senator of each county included in a regional housing authority shall appoint one person as a commissioner of such authority and each such commissioner to be first appointed by the Senator of a county may be appointed at or after the time of the adoption of the resolution declaring the need of such regional housing authority or declaring the need for the inclusion of such county in the area of operation of such regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as herein provided, the Senator of each such county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The Senator of each county

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shall appoint the successor of the commissioner appointed by him or by any Senator preceding him in office. If any county is excluded from the area of operation of a regional housing authority, the office of the commissioner of such regional housing authority appointed by the Senator of such county shall be thereupon abolished. If the area of operation of a regional housing authority consists at any time of an even number of counties, the commissioners of the regional housing authority appointed by the Senators of such counties shall appoint one additional commissioner. The commissioners of such authority appointed by the Senators of such counties shall likewise appoint each person to succeed such additional commissioner, provided the term of office of such person begins during the terms of office of the commissioners appointing him.

Thus, Senators in counties participating in a regional housing authorities, by statute, exercise appointment powers as described in the statute.

The impact of the Home Rule Act on appointment of county housing authority members was discussed in an opinion dated December 21, 1988, a copy of which is enclosed. Therein, we concluded that we could identify no authority for county councils to depart from the general law relative to the creation of housing authorities. As stated with respect to the law governing county housing authorities, certainly the law relative to regional housing authorities would be considered general law. Such general law not having been amended since the inception of home rule, and county councils not having authority to vary from general law in this instance, we must conclude that 31-3-960 remains in effect in its present form. See 4-9-30 (council's authority is subject to the constitution and general law of the state) and 4-9-170 (council cannot make appointments to positions for which general law is in existence and other appointment provisions are made). See also Op. Atty. Gen. dated June 17, 1980 (municipal council cannot vary the terms of law relative to municipal housing authorities), copy enclosed.

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Based on the foregoing, it is the opinion of this Office that appointments of commissioners of regional housing authorities would be made by Senators pursuant to 31-3-960.

With kindest regards, I am

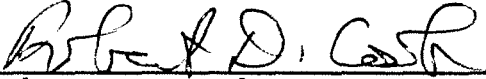
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:


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