

The State of South Carolina



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

April 6, 1989

The Honorable Isadore E. Lourie
Senator, District No. 21
303 Gressette Building
Columbia, South Carolina 29202

Dear Senator Lourie:

You have asked whether a county election commission has the power to hire and fire its director or other employees. There is no specific statute which governs this question. However, it is our opinion that, if faced with the issue, a court would most likely determine that a county election commission has the power to hire and fire its employees.

Section 7-13-70 of the Code of Laws of South Carolina (1976 as amended) establishes county election commissions and provides for their method of appointment. This statute provides in pertinent part:

For the purpose of carrying on general or special elections provided for in Section 7-13-10 the Governor shall, at least ninety days prior to any such election, appoint for each county not less than three nor more than five commissioners of election upon the recommendation of the Senator and at least half of the members of the House of Representatives for the respective counties.... For the general election held on the first Tuesday following the first Monday in November in each even-numbered year, the commissioners of election shall appoint three managers of election for each polling place in the county for which they must respectively be appointed for each five hundred electors, or portion of each five hundred electors, registered to vote at the polling place....

Section 7-13-80 of the Code further authorizes the managers of election to appoint a clerk "to assist them in their duties." Oddly enough, however, nowhere in these statutory provisions are the commissioners of election authorized to appoint a clerk, or is a clerk even mentioned. Nevertheless, it is our understanding that most

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county election commissions today routinely employ some suitable person designated as a clerk or executive director and other staff members to assist them in carrying out the election laws. It is our further understanding that such clerks are typically under the direction of the county commissioners of election.

It is generally recognized that statutory authority "ordinarily is not necessary to enable a public official to appoint sufficient deputies to perform the duties of his office." 67 C.J.S., Officers, Section 278. Such persons generally are appointed "at the pleasure of the appointive authority and their deputation expires with the office on which it depends." Supra.

Based upon this reasoning, this Office has previously determined that because county registration boards are charged with the duty and responsibility of conducting registration, such boards possess the inherent authority to employ clerks etc. to effectuate registration. 1956-58 Op. Atty. Gen., p. 112 (August 17, 1957). This same reasoning would apply to the case of county commissioners of election. Since Section 7-13-70 specifically expresses as its purpose the appointment of county election commissioners in order to carry on the general or special elections provided for in Section 7-13-10, such commissioners would thus possess the authority to appoint a clerk if deemed necessary to carry out the provisions of the election laws. Even though no specific statutory authorization for such appointments can be found, it is logical to conclude, based upon the foregoing authority, that such clerks would be appointed by the election commissioners who are specifically authorized to carry out the purpose of conducting general or special elections.

The only other possible authority for the appointment of a clerk of an election commission would be county council since such clerks are apparently considered county employees. However, Section 4-9-30(7) provides that county council is authorized

- (7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. (emphasis added).

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Section 7-13-70 expressly provides that commissioners of election are appointed by the Governor upon the recommendation of the Senator and at least half of the members of the House of Representative from the county. Since the appointing authority for county election commissioners is by an authority "outside county government", by Section 4-9-30(7) the General Assembly has mandated that county council possesses no authority in this area, although county election commissioners have been determined in prior opinions of this Office to be county officers. This conclusion is consistent with 1975 Op. Atty. Gen., No. 4196, p.246 (November 21, 1975) which concluded that the Home Rule Act effects "no change in the functioning or structure" of county election commissioners.

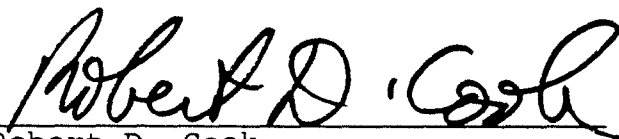
It would thus be our conclusion that the county election commissioners would possess the authority to hire and fire a clerk or other employees of the commission.^{1/} Further, it would be our view that, absent any statute setting forth a term of office for such clerks, they would serve at the pleasure of the commission. 67 C.J.S., Officers, Section 278. Because there is no express statute governing this situation and since the issue has not been finally resolved by our courts, you may wish to seek legislative or judicial clarification to resolve the matter with certainty.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

^{1/} Our conclusion is supported by two other statutory provisions. Section 7-5-20 of the Code now authorizes county boards of registration to appoint a clerk. Moreover, Section 7-17-10 of the Code authorizes the county election commission itself to convene into a board by canvassers after the election and expressly gives the board of canvassers the authority to appoint a clerk. In view of this statute and Section 7-13-70 authorizing managers of election (who are appointed by the election commission) to appoint a clerk, it would thus be somewhat incongruous to conclude that the election commissioners were not authorized to appoint a clerk or secretary for general purposes.