

The State of South Carolina



Office of the Attorney General

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November 25, 1987

The Honorable James M. Waddell, Jr.
Senator, District No. 46
Post Office Box 1026
Beaufort, South Carolina 29901

Dear Senator Waddell:

You have requested the opinion of this Office as to whether, as a matter of law, you would be disqualified from voting, as a member of the Budget and Control Board, upon a matter which was considered by the South Carolina Coastal Council, of which you were a member until recently. It is our opinion that you would not be so disqualified as a matter of law.

It is our understanding that, with respect to a pending application under the Coastal Zone Management Act, Section 48-39-10 et seq., Code of Laws of South Carolina (1976), the Budget and Control Board has the authority to issue a permit for dredging in the coastal zone upon, inter alia, certification by the Coastal Council that the dredging project complies with the provisions of the Coastal Zone Management Act. As noted above, you participated in the certification process as a member of the Coastal Council. Now the permit application is pending before the Budget and Control Board.

As has been stated in 1 Am.Jur.2d Administrative Law § 65, "the mere formation of an opinion and the expression of that opinion has been held not to disqualify an officer or agency from passing upon the merits of a particular controversy." Generally, participation by a judicial or quasi-judicial officer in a previous proceeding in a case does not, by itself, render that officer disqualified to sit in subsequent proceedings. See 46 Am.Jur.2d Judges § 181. In fact, should the Budget and Control Board's action be deemed an appellate review or

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procedure, in the absence of statutory or constitutional provisions to the contrary, the judicial or quasi-judicial officer is not precluded from reviewing his own acts. 46 Am.Jur.2d Judges § 182. Even in the event of a rehearing of an administrative action or proceeding, courts have been extremely reluctant to disqualify the hearing officer from sitting in the rehearing merely because he was reversed on earlier rulings. See 1 Am.Jur.2d Administrative Law § 65. Thus, it is our opinion that as a matter of law, you would not be disqualified from hearing the matter in question as a member of the Budget and Control Board.

As to your question concerning your authority to vote on this matter as a member of the Budget and Control Board, even though you have not been formally elected chairman of the Senate Finance Committee, it is our opinion that your acts as a member of the Board would be valid. It is unquestionable that you are discharging this duty under color of authority. Heyward v. Long, 178 S.C. 351, 183 S.E. 145 (1936). Accordingly, any action you might take in relation to the public or a third party will be considered valid and effectual.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions