

February 1985

The State of South Carolina



Office of the Attorney General

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ATTORNEY GENERAL

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January 29, 1985

Mr. George L. Schroeder
Director, Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

You have asked this Office whether the members of the Commission of Pilotage for the Port of Charleston are being properly appointed. Charleston County Council enacted Ordinance No. 342 in May 1980 providing for the appointment of the commissioners after being advised by this Office by an opinion dated January 28, 1980, that appointment of the commissioners by county council would be appropriate pursuant to Section 4-9-170, Code of Laws of South Carolina (1976), a part of the Home Rule Act. However, Section 54-15-40 of the Code provides for appointment of commissioners by the Governor upon approval of a majority of the county legislative delegation. Which appointment provision is to be followed is your question.

By an opinion of this Office dated July 24, 1984, this Office examined the Harbor Pilot Board or program and concluded that the Legislative Audit Council had the authority to conduct its review of the Harbor Pilot board or program just as the Council would review any other state agency under the "sunset" legislation. This Office did not, in that opinion, comment on the appointment procedure or the Charleston County ordinance. As was noted in an opinion of this Office dated September 6, 1983 (copy enclosed), a state board or program may have both state and local attributes, thus being a state agency for some purposes and a local agency for others. While this Office has concluded that the Harbor Pilot board or program is a state agency for "sunset" review, the board or program also has local attributes and may be considered a county agency as well.

Continuation Sheet Number 2
To: Mr. George L. Schroeder
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A county ordinance, just as a state statute, is presumed to be valid as enacted unless or until a court declares it to be invalid. Casey v. Richland County Council, Op. No. 22146, S.C. Supreme Court, filed July 26, 1984. Only the courts, and not this Office, would have the power to declare such ordinance invalid. Until such time as the ordinance might be declared invalid by a court, this Office cannot say that appointment of Commission members pursuant to the ordinance is incorrect.

In conclusion, until a court determines otherwise, it would be appropriate to follow the opinion of this Office dated January 28, 1980 and Charleston County Ordinance No. 342 as to appointment of Commission members.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions