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April 14, 1986

David B. Ward, Esquire  
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Dear Mr. Ward:

As the attorney for the Greenville Transit Authority, you have asked the following questions relative to adoption of rules of procedure by the Authority:

1. May the Authority adopt by-laws restricting future governing boards so that any change of the by-laws may require a two-thirds majority vote?
2. Are certain provisions, as discussed below, inconsistent with and repugnant to the enabling Legislation for regional transportation authorities, so that the restriction in the by-laws limiting the chairman to two consecutive terms is void?
3. Referencing a two-thirds majority vote specified in the by-laws, may a simple majority in attendance at a quorum of the membership amend the by-laws to provide that the chairman may be elected for more than two successive terms?

Each of your questions will be addressed separately, as follows.

The Greenville Transit Authority was established in 1983 pursuant to Section 58-25-10, Code of Laws of South Carolina (1976, as amended). The Authority is operating under the older law rather than the newer statutes adopted in 1985, as permitted by Section 4 of Act No. 169, 1985 Acts and Joint Resolutions. By Section 58-25-50(o) of the older law, the Authority has been authorized to promulgate rules and regulations. Section 4 of Act No. 169 requires even the authorities operating under the

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older law to follow new Section 58-25-40 as to authority members; subsection (4) is substantively the same as old Section 58-25-40(3) and provides in relevant part that

[t]he board of the authority shall elect one of its members as chairman, one as vice-chairman, and other officers as may be necessary, to serve for one year in that capacity or until their successors are elected and qualify. A majority of the board constitutes a quorum. ...

There is no limitation expressed therein as to a chairman succeeding himself.

The by-laws adopted by Greenville Transit Authority contain several provisions which must be considered herein. In Article III, Section 1 on Officers provides that "[m]ember officers shall not hold more than one (1) office at a time and shall not be chosen for the same office for more than two (2) consecutive terms." In Article III, Section 2, "[t]he membership shall be constituted as authorized by the South Carolina Statute(s) stated in the preamble herein." The preamble refers to Chapter 25 of Title 58 of the Code, particularly Section 58-25-30 as to membership. In Article VI, it is provided that "[i]n the event of a conflict between the provisions of the By-laws of the Authority and the Statutes of the State of South Carolina and amendments thereto, the terms and conditions of the State Statutes and Amendments thereto shall prevail." Finally, Article V relative to amendments provides that "[e]xcept in these By-laws herein before provided with respect to membership, these By-laws may be repealed, altered, amended, added to, or modified by a two-thirds vote of the members ... ." With these provisions in mind, your questions will be discussed.

#### Question 1

The Greenville Transit Authority, as noted, has the authority to promulgate rules. However, the Authority could not effectively adopt a rule restricting future changes to be made only upon a two-thirds majority vote.

The South Carolina Supreme Court stated in State ex rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936), that "[t]he power to make rules is not one when once exercised is exhausted. It is a continuous power, always subject to be exercised by the [legislative body], and, within the limitations suggested,

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absolute and beyond the challenge of any other body or tribunal." 181 S.C. at 22. It has also been stated that a

rule of parliamentary law is a rule created and adopted by the legislative or deliberative body it is intended to govern. ... [It] is subject to revocation or modification at the pleasure of the body creating it ... .

....

The rules of procedure passed by one legislative body are not binding on a subsequent legislative body ... .

....

Rules of procedure are always within the control of a majority of a deliberative body and may be changed at any time by majority vote. ...

67 C.J.S. Parliamentary Law §§ 2, 4, 8. See also 59 Am.Jur.2d Parliamentary Law § 2; Commonwealth ex rel. Fox v. Chace, 403 Pa. 117, 168 A.2d 569 (1961); State ex rel. Kiel v. Riechmann, 239 Mo. 81, 142 S.W. 304 (1911); Ops. Atty. Gen. dated May 18, 1981; June 13, 1985; and March 1, 1979, copies of which are enclosed.

#### Question 2

As noted above, state law places no restriction on the number of terms which one may consecutively serve as chairman of a regional transportation authority. Any conflict between state law and the Authority's by-laws would appear to be resolved by Article VI of the Authority's by-laws providing that in case of conflict between state law and the Authority's by-laws, state law is to prevail. Cf., Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928).

#### Question 3

Notwithstanding the requirement of a two-thirds majority vote in Article V to alter the Authority's by laws, only the vote of a simple majority would be necessary.

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In State ex rel. Kiel v. Riechmann, supra, the body under consideration therein required a three-fourths vote to amend its rules. Holding that only a simple majority vote was necessary, the Supreme Court of Missouri stated that

a majority being authorized in the first instance to pass a rule can not only pass it, but can at any time thereafter annul the same rule, even though the rule to be repealed or annulled is one which provides that no rule can be repealed or amended without a vote greater than a majority.

142 S.W. at 310. Similarly stated, "rules of procedure are always within the control of the majority and may be changed at anytime by a majority vote." Commonwealth ex rel. Fox v. Chace, supra, 168 A.2d at 571. Thus, the provision in the by-laws notwithstanding, a simple majority of a quorum in attendance at a meeting of the Authority could amend that portion of the by-laws relative to successive terms of the chairman.

This Office addressed the same general issue in an opinion dated October 9, 1985, a copy of which is enclosed. Of particular interest therein may be the discussion of Manigault v. Springs, 199 U.S. 473 (1905), discussing a subsequent legislature's refusal to follow procedures adopted by an earlier legislature in this State.

We trust that the foregoing has satisfactorily responded to your inquiry. If you need clarification or additional assistance, please advise.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

  
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