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Office of the Attorney General

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February 10, 1986

Ms. Nela Gibbons, Executive Director
Children's Foster Care Review Board System
2221 Devine Street, Suite 418
Columbia, South Carolina 29205

Dear Ms. Gibbons:

You have advised that certain portions of the Code of Laws concerning the Foster Care Review Board System have been repealed and that provisions for the local review boards are contained in Part III, Section 2(J) of the 1985-86 Appropriations Act. You have asked for the opinion of this Office as to whether appointments to local review boards made pursuant to the repealed Section 20-7-2400, Code of Laws of South Carolina (1976), are deemed to be continuing, or whether new appointments must be made to all review boards. You have also inquired as to the effect of H. 3186 on our interpretation.

Part III, Section 2(J) of Act No. 201, 1985 Acts and Joint Resolutions, provides the following:

> There are created sixteen local boards for review of cases of children receiving foster care, one in each judicial circuit, composed of five members, appointed by the Governor upon recommendation of the legislative delegations of each county within the circuit for terms of twelve months. If the county legislative delegations within a judicial circuit have not recommended to the Governor a person to fill a review board vacancy within ninety days after being

> notified by registered mail that the vacancy exists, then the local review boards in the judicial circuit may recommend to the Governor someone to fill the vacancy. All local board members must be residents of the judicial circuit which they represent. Local boards shall elect their chairmen.

A comparison of this statute with repealed Section 20-7-2400 reveals that, with the exception of diminishing the term from four years to twelve months, the other provisions are identical to those in Section 20-7-2400.

The second paragraph of Section 20-7-2400 is now found in Part III, Section 2(K) of the Appropriations Act. A portion of Section 20-7-2400 dealing with service by the chairmen of the local review boards on the State Advisory Board was not re-enacted; because provisions relating to the State Advisory Board were not re-enacted after the repeal of legislation relative to the foster care review system, see Part II, Section 45 of the Appropriations Act, it would be unnecessary to re-enact these provisions of Section 20-7-2400. The powers and functions given to review boards, formerly in Section 20-7-1630, are generally re-enacted in Part III, Section 2(B) of the Appropriations Act; though guidelines for recommendations have been expanded in the Appropriations Act, the powers remain basically recommendatory. Thus, with the exception of decreasing the term of office, the new law relative to the functioning of the local review board is practically the same as the law which was repealed.

The primary objective of the courts and this Office in construing a statute is to ascertain and give effect to legislative intent if at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Furthermore,

> where a statute is repealed and all, or some, of its provisions are at the same time re-enacted, the re-enactment is considered a reaffirmance of the old law, and a neutralization of the repeal, so that the provisions of the repealed act which are thus re-enacted continue in force without interruption ... .

State v. Patterson, 220 S.C. 269, 271, 66 S.E.2d 875 (1951); cf., Southern Power Co. v. Walker, 89 S.C. 84 (1911); Lyles v. McCown, 82 S.C. 127 (1909). It thus appears to be the intention of the General Assembly that the local review boards were to continue operation without interruption, since the provisions of Part III, Section 2(J) of the Appropriations Act actually continued in effect the provisions of Section 20-7-2400, as to appointment of local review boards, and other relevant statutory provisions as to functions of the local boards. The only change would be the term served by review board members.

Thus, it is the opinion of this Office that membership on the local review boards would continue without interruption. Reappointment by the Governor will not be necessary. Should a member's term expire, then of course the position would be vacant and the Governor would appoint someone for the position; however, this appointment would have occurred under the repealed statute, as well. The only difference in appointment under the proviso would be the shorter term.

Our interpretation of the legislative intent to continue operation of the local review boards as if the old statute had not been repealed is consistent with the general law which provides that when the legislature has authority to create an office, the legislature also has authority to abolish the office, change the terms of office, or otherwise impose limitations or conditions upon a statutory office. Ward v. Waters, 184 S.C. 353, 192 S.E. 410 (1937); State ex rel. Huckabee v. Hough, 103 S.C. 87, 87 S.E. 436 (1915); State ex rel. Woodsides v. McDaniel, 19 S.C. 114 (1883). However, for a board to be completely abolished, such intentions by the legislature must be clearly stated. Twilley v. Stabler, 290 A.2d 636 (Del. 1972); 67 C.J.S. Officers § 14; 63A Am.Jur.2d Public Officers and Employees § 34. The only change which clearly appears within the proviso is the intent to shorten the length of time one serves on a local review board; no intention to rescind all previous appointments and reappoint all members anew appears anywhere within the new statute. Thus, the better interpretation of the proviso, in keeping with general law, is that operation of the local review boards with members appointed under the repealed statute is to continue without interruption except for those modifications contained in the Appropriations Act.

You had inquired about the effect which H. 3186 would have on the above interpretation of the temporary proviso in Part III of the 1985-86 Appropriations Act. That bill in part will add Section 20-7-2379 to the Code. The portion of that section establishing the South Carolina Board of Directors for Review of Foster Care of Children provides as to terms of office:

> Terms of office for the members of the board are for four years and until their successors are appointed and qualify. Of the initial appointments, the Governor shall designate two members to serve for one year, two for a term of two years, two for a term of three years, and one for a term of four years. Thereafter, appointments must be made by the Governor in the manner as prescribed above for terms of four years to expire on June thirtieth of the appropriate year. [Emphasis added.]

The term "initial" means "that which begins or stands at the beginning." Black's Law Dictionary 704 (5th Ed. 1979). It appears that appointment of an entirely new board of directors, rather than continuation of terms of office past June 30, 1986, was contemplated by the language of Section 20-7-2379; we also note that staggered terms for these board members are being established, a departure from the manner in which the terms of former board members were set up. Thus, terms of the present board members would expire on June 30, 1986, and new appointments, effective July 1, 1986, would be required.

The bill also adds Section 20-7-2385 to the Code. Except for minor grammatical changes, the new section is virtually identical to repealed Section 20-7-2400 and to the proviso to Part III of the 1985-86 Appropriations Act, quoted above, except that terms of office of local review board members have been restored to four years rathering than ending on June 30, 1986. As noted above, the legislature has the power to change terms of office; further, the re-enactment of a statute in identical language is to be considered a reaffirmation of the old law. State v. Patterson, supra. There is no language in new Section 20-7-2385 as there was in Section 20-7-2379 relative to initial appointments, nor is there any modification of how the terms are to be served (i.e., staggered, as for the State Board). Thus, we conclude that the terms of those local review board members

appointed under old Section 20-7-2400 or the proviso would be extended to four years from the date of appointment. No new appointments are required, except of course to replace members whose terms have expired.

The foregoing is intended only to interpret the proviso in Part III of Act No. 201 of 1985 and the relevant portions of H. 3186 as to terms of the various board members. We do not comment as to any aspect of any litigation which may challenge the validity of the proviso in Part III of Act No. 201 of 1985.

We trust the the foregoing satisfactorily responds to your inquiry. Please advise if additional assistance or clarification is needed.

Sincerely,

Patricia D. Petway

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PDP/an

REVIEWED AND APPROVED BY:

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