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June 27, 1986

The Honorable C. Alex Harvin, III
The Majority Leader
House of Representatives
204 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harvin:

With your letter of June 2, 1986, you enclosed a copy of a letter dated May 12, 1986, from the United States Department of Justice, concerning the abolition of the elective office of Director of Public Works in Clarendon County. You asked for our interpretation of this letter as it relates to the continued existence of the office.

It would be helpful to see the ordinance which abolished the office. For the purpose of an expedited response to your letter, however, it is assumed that the office was abolished as of a specified date or at the conclusion of the term of the incumbent. As was stated in our letter to you dated April 15, 1986, until Clarendon County received notice of preclearance, the abolition would not be operative. Notice of preclearance has now been received, and thus, as to the Voting Rights Act, the ordinance abolishing the office would be permitted to take effect at whatever time has been specified therein. The effect of the May 12, 1986, letter is to advise that there is presently no objection, by the Department of Justice under the Voting Rights Act, to the abolition of the office.

It should be noted that Section 4-9-30(6), Code of Laws of South Carolina (1976, as amended), permits county councils to establish, modify, and abolish agencies, departments, boards, commissions, and positions generally. It has been stated repeatedly, as to positions created by the General Assembly, that the General Assembly may abolish, modify or otherwise impose conditions upon the positions or position-holders. As

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stated in Ward v. Waters, 184 S.C. 353, 192 S.E. 410 (1937),

[t]he power that creates an office can impose such limitations and conditions upon the manner of filling it, and the tenure and the exercise of the duties of the office, and may modify or abolish any of these, or the office itself, as its wisdom may dictate, when no provision of the Constitution is contravened in doing so.

184 S.C. at 361. See also Ops. Atty. Gen. dated July 28, 1956; April 26, 1956; October 17, 1952; and April 12, 1951, enclosed. The same reasoning would be applicable in this instance. See also Graham v. Creel, Op. No. 22582, filed June 23, 1986 (S.C. S. Ct.) (county council has authority to repeal an act of the General Assembly, which act is local in nature, after January 1, 1980).

You had asked about steps which the incumbent official might take if he disagreed with the actions taken by Clarendon County Council. Keeping in mind the general law as is stated above, we would suggest that the incumbent official consult an attorney to determine whether he may have any remedies in this instance. To aid the official and his attorney, we are enclosing herewith general provisions as to abolition of offices and rights of the incumbent office-holders: 67 C.J.S. Officers § 14 and 63A Am.Jur.2d Public Officers and Employees § 35.

We hope that the foregoing and the enclosed information will satisfactorily respond to your inquiry. Please let us know if you need anything more in this matter.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions