1980 WL 120574 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 2, 1980

***1** Ms. M. Inez Moore
Medical, Military, Public and Municipal Affairs Committee
House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Inez:
You requested an opinion concerning the constitutionality of Section 4 of S. 274 and Section 3 of the amendment, which relate to the method of appointing members of the South Carolina Board of Chiropractic Examiners. It is the opinion of this Office that the provision in the bill is probably constitutional but that the provision in the amendment is probably not constitutional.

The South Carolina Supreme Court has disapproved methods of appointment in which the power to make an appointment is delegated to a private association. Gold v. South Carolina Board of Chiropractic Examiners, 271 S.C. 74, 245 S.E.2d 117 (1978); Gould v. Barton 256 S.C. 175, 181 S.E.2d 662 (1971). On the other hand the Court has given its approval to a method of appointment by which the Governor appoints a person to a state board upon the recommendation of a private association. Floyd v. Thornton, 220 S.C. 414, 68 S.E.2d 332 (1951). It should be noted that the Court may have impliedly overruled the Floyd case in Gold v. Board of Examiners, supra. Therefore the constitutionality now of a provision for a recommendation to the Governor is not free from doubt.

Nonetheless, assuming that Floyd has not been actually overruled, the method of appointment described in Section 4 of S. 274 appears similar to the Floyd case in that the Governor is free to decline any set of nominations from a congressional district. Therefore those nominations appear to be similar to the recommendations which were permitted in Floyd v. Thornton.

The constitutionality of the method of appointment described in the Section 3 of the amendment to S. 274 is somewhat more doubtful in that, if the Governor is not free to reject any set of nominations, then the Court may find that the power of appointment has been effectively delegated to a group of licensed chiropractors who have restricted the Governor's power of appointment to two nominees. This would probably be unconstitutional for reasons set out in my letter to you dated October 25, 1979.

For the above reasons it would seem that the method of appointment described in the bill would probably be constitutional whereas the method described in the amendment would probably not be constitutional.
Sincerely yours,

David C. Eckstrom
State Attorney

1980 WL 120574 (S.C.A.G.)