

1980 WL 120634 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1980

*1 Mr. Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina

Dear Mr. Sullivan:

In response to your request concerning the appointment powers of the Charleston County Council pursuant to [Section 4-9-170, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, my opinion is as follows:

1. The Council has the appointment power with respect to the Charleston County Board of Health, the Charleston County Tax Exempt Board, the Charleston County Commissioners of Pilotage, the Charleston County Higher Education Study Commission, the Charleston County Industrial Commission and the Charleston County Substance Abuse Commission because the members of those county boards are presently appointed by special laws, viz: 41 STAT. 1777 (1940) (Board of Health); 56 STAT. 857 (1969) (Tax Exempt Board); [§ 54-15-40, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Commissioners of Pilotage); 55 STAT. 1359 (1967) (Higher Education Study Commission); 53 STAT. 2352 (1964) (Industrial Commission); 58 STAT. 800 (1973), as amended by 60 STAT. 2381 (1978) (Substance Abuse Commission). Although the Charleston County Board of Assessment Appeals and the Charleston County Board of Assessment Control are provided for by a special law [54 STAT. 2573 (1966)], there may be a question as to whether or not the Council is authorized to alter the provisions thereof because of the following language of [Article X, Section 2\(c\) of the South Carolina Constitution](#):

Statutes pertaining to the methods of assessment of property for ad volorem taxation not in conflict with this article shall continue in force until changed by an act of the General Assembly.

It may be that those provisions of Act No. 999 of 1966 which relate to the Board of Assessment Control and the Board of Assessment Appeals can be interpreted as pertaining to methods of assessment of property for ad volorem taxation and, therefore, cannot be altered except by legislation. Because the question is one which is not free from doubt, I would suggest that a judicial resolution thereof pursuant to [Sections 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, the Uniform Declaratory Judgments Act, is the only means by which to obtain a definitive determination.

2. The Charleston County Legislative Delegation will retain whatever recommendation and/or appointment power it now possesses with respect to the governing bodies of the North Charleston District, the St. Paul's Fire District, the St. John's Fire District, the Ashley Fire Protection District, the St. Andrews Public Service District, the St. Andrews Parish Parks and Playgrounds Commission, the Charleston County Aviation Authority, the Bulls Bay Water District, the James Island Public Service District and the Charleston County Park, Recreation and Tourist District because they constitute governing bodies of special purpose districts¹ or other political subdivisions and are, therefore, outside of the scope of the Council's appointment authority under [Section 4-9-170 of the Code](#), viz: 57 STAT. 3473 (1972) (North Charleston District); 46 STAT. 1005 (1949), as amended by 59 STAT. 950 (1975) (St. Paul's Fire District); 51 STAT. 731 (1959) (St. John's Fire District); 43 STAT. 1697 (1944) (Ashley Fire Protection District); 46 STAT. 1015 (1949) (St. Andrews Public Service District); §§ 51-281 [et seq.](#), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (St. Andrews Parish Parks & Playgrounds Commission); 56 STAT. 2634 (1970) (Aviation Authority); §§ 6-13-10 [et sequ.](#), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (Bulls

Bay Water District); 52 STAT. 917 (1961), as amended by 58 STAT. 3210 (1974) (James Island Public Service District)² 55 STAT. 2542 (1968), as amended by 57 STAT. 3122 (1972) (Park, Recreation and Tourist District). The Legislative Delegation will also retain whatever recommendation and/or appointment power it now possesses with respect to the Charleston County Board of Voter Registration, the Charleston County Board of Social Services, the Charleston County Veterans Affairs Officer, the Charleston County Election Commission, the Charleston County Forestry Board, the Charleston County Mental Health Board, the Charleston County Medical Examiners Commission, the Charleston County Mental Retardation Board and the Foster Care Review Board because the members of those boards, some of which are not purely county boards, are appointed pursuant to general law and are, therefore, outside of the scope of the Council's appointment authority under [Section 4-9-170 of the Code](#), viz: [§ 7-5-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Board of Voter Registration); [§ 43-3-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Board of Social Services); [§ 25-11-40, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Veterans Affairs Officer); [§ 7-13-70, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Mental Health Board);³ [§ 17-5-220, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Medical Examiners Commission); [§ 44-21-830, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Mental Retardation Board); [§ 43-13-20, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Foster Care Review Board). The Legislative Delegation will also retain whatever recommendation and/or appointment power it now possesses with respect to the Area Commission for the Berkeley, Charleston, Dorchester Technical Education Center because it is not a Charleston County board, as more fully discussed in another opinion of this Office, a copy of which is enclosed herewith,⁴ and is, therefore, outside of the scope of the Council's appointment authority under [Section 4-9-170 of the Code](#). See, [§ 59-53-410, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Likewise, the Berkeley, Charleston, Dorchester Council of Governments is most probably not a Charleston County board within the meaning of [Section 4-9-170 of the Code](#) and, additionally, its members are appointed pursuant to a general law. See, [§ 6-7-130, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Finally, the Charleston County magistrates are to be appointed pursuant to the provisions of Part III of Act No. 164 of 1979 [61 STAT. 311 (1979)] and the Council has no appointment powers with respect to them by virtue of [Section 4-9-170 of the Code](#). See also, [SC. CONST. art. VIII, § 14\(4\)](#).

With kind regards,

*2 Karen LeCraft Henderson
Senior Assistant Attorney General

Footnotes

- 1 But see, [Torgerson v. Craver](#), 267 S.C. 558, 230 S.E.2d 228 (1976) (Charleston County Aviation Authority); see also, [Cooper River Park and Playground Commission, et al. v. The City of North Charleston](#), — S.C. — (Opinion No. 21031 filed August 16, 1979).
- 2 The 1974 amendment provides for the Legislative Delegation's recommendation power only in the event of a vacancy. 58 STAT. 3210 (1974).
- 3 The 1979 amendment allows a county legislative delegation to delegate its recommendatory power to the county governing body. 61 STAT. 47 (1979).
- 4 That opinion also discusses the fact that, inasmuch as the technical education commissions involve educational matters, they may also be beyond the control of county councils because of [Section 4-9-70, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

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