

1979 WL 42721 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 29, 1979

***1 RE: [Section 40-15-20, South Carolina Code](#)**

Dr. Lynn Campbell
President
State Board of Dentistry
1106 Anthony Avenue
Columbia, South Carolina

Dear Dr. Campbell:

You have inquired as to whether the State Board of Dentistry's selection procedure provided for in [§ 40-15-20, Code](#) of Laws for South Carolina, 1976, violates Art. 3, § 1 of the Constitution of South Carolina, 1895, as amended. Though the conclusion is not free from doubt, it is my opinion that it does not.

[Section 40-15-20](#) provides a procedure whereby the Governor appoints licensed dentists to the Board pursuant to the Board's recommendations which are based upon elections conducted by the Board at which the licensed dentists residing within a particular congressional district elect from among themselves, the nominee for the particular vacancy.

Generally, the legislature may not delegate the power to appoint or elect public officials to private persons or bodies without violating [Art. 3, § 1 of the South Carolina Constitution](#). [Ashmore v. Greater Greenville's Sewer District](#), 211 S.C. 77, 44 S.E.2d 88; [Gould v. Barton](#), 256 S.C. 175, 181 S.E.2d 662; [Gold v. South Carolina Board of Chiropractic Examiners](#), 271 S.C. 74, 245 S.E.2d 117. In [Ashmore](#), however, the Court articulated an exception to this general prohibition. This exception has been reiterated by the Court on at least one occasion since the [Ashmore](#) decision. [State v. Taylor](#), 223 S.C. 526, 77 S.E.2d 195. The Court in [Ashmore](#), concluded that where there existed a rational and substantial relationship between the private group and the laws to be administered by the appointees, the delegation is not violative of [Art. 3, § 1](#). Scrutiny of the Dental Board's selection process unquestionably reveals that the method of selection is rational and is of sufficient relationship to meet this test.

Two recent Supreme Court cases cloud the ultimate conclusion of this question, however, as they appear to prohibit all such delegations. [Gould v. Barton](#), *supra*; [Gold v. South Carolina Board of Chiropractic Examiners](#), *supra*. A factual review of these cases reveals that both involve the appointment of a particular Board or Board member by a private organization of no official status. Thus, the selection procedure prescribed in [§ 40-15-20](#) substantially differs from those under scrutiny in [Gold](#) and [Gould](#). Furthermore, even though the [Ashmore](#) test was not mentioned in either of the two recent cases, [Ashmore](#) was cited with approval in the [Gould](#) decision; and, therefore, it appears that the rational and substantial relationship exception survives both [Gould](#) and [Gold](#).

Thus, it appears that the selection procedure for appointments of the State Board of Dentistry is not violative of [Art. 3, § 1 of the State Constitution](#).

Very truly yours,

Edwin E. Evans
Assistant Attorney General

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