

1980 WL 120775 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 18, 1980

*1 B. O. Thomason, Jr.
Chairman
S.C. Public Service Merit Selection Panel
c/o Law Offices of Love, Thornton, Arnold & Thomason
Post Office Box 10045
Greenville, South Carolina 29603

Dear Mr. Thomason:

You have asked the opinion of this Office on whether a name which the General Assembly has rejected for election to a vacancy on the Public Service Commission may be renominated by the Merit Selection Panel and resubmitted to the General Assembly.

The Merit Selection Panel and the merit selection process are provided for by Act No. 167 of the Acts and Joint Resolutions of 1979 [codified as §§ 58-3-20, et seq., Code of Laws, 1979 Cum.Supp.]. The portion of the Act relevant to the question posed by you is as follows:

. . . Whenever a vacancy shall occur on the Public Service Commission . . . the Merit Selection Panel shall submit to the General Assembly . . . the names of two persons qualified as candidates to fill such vacancy . . . The General Assembly shall elect one of such candidates to fill the vacancy on the Public Service Commission; provided, however, that nothing shall prevent the General Assembly from rejecting all candidates so nominated. In the event the General Assembly does reject the persons first nominated, the Merit Selection Panel shall submit in the same manner as provided in this section the names of other persons qualified as candidates. Further nominations shall continue to be made until such vacancy is filled . . . Section 4, Act 167, at p. 355 [§ 58-3-23] (emphasis added).

With regard to the initial nominations, the language emphasized in the quoted portion of Act 167 is unambiguous and should be applied according to its literal meaning. [Green v. Zimmerman](#), 269 S.C. 323, 238 S.E.2d 323 (1977); [Martin v. Ellisor](#), 266 S.C. 377, 223 S.E.2d 415 (1976). If the General Assembly rejects the names first nominated, the Merit Selection Panel then must nominate and submit the names of persons other¹ than those first nominated.

The General Assembly, recognizing that the second set of nominees also might be rejected, provided, as noted above, that: 'Further nominations shall continue to be made until such vacancy is filled.' If the General Assembly specifically provided that it would not reconsider the persons first nominated and rejected, it could not have intended to remove this limitation in 'further nominations' required to fill the particular vacancy. The language concerning 'further nominations,' therefore, must be construed to limit such nominations to persons who previously have not been submitted to the General Assembly concerning the vacancy. Otherwise, the General Assembly would be confronted with circumstances it intended to avoid by the language used, and this legislative intent must control any interpretation of that language. [Belk v. Nationwide Mutual Ins. Co.](#), 271 S.C. 24, 27, 244 S.E.2d 744 (1978); [Greenville Baseball, Inc. v. Bearden](#), 200 S.C. 363, 368-369, 20 S.E.2d 813 (1942). Furthermore, the language pertaining to the second nominations requires them to be made 'in the same manner as provided in this section.' Considering Section 4 in its entirety, it is no less likely that the General Assembly intended 'further nominations' to be submitted in that 'same manner.' [Gaffney v. Mallory](#), 186 S.C. 337, 195 S.E. 840 (1938).

*2 The language in Section 4 in effect prohibiting the resubmission of rejected nominees is limited to nominations to a particular vacancy. Nothing therein limits, or appears to have been intended to limit, the Merit Selection Panel from nominating for election to another or later vacancy on the Public Service Commission a person previously rejected.

Based on the foregoing, it is the opinion of this Office that the Merit Selection Panel cannot renominate and resubmit to the General Assembly for election to a vacancy on Public Service Commission a name which the General Assembly has previously rejected with regard to that particular vacancy. However, nothing prohibits such names from being renominated or resubmitted for another or later vacancy.

Sincerely,

James M. Holly
Assistant Attorney General

Footnotes

- 1 'Other' here is used to mean 'different or distinct from that or those referred to.' Webster's New World Dictionary, 2d. ed., 1976, at p. 1007.

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