

1980 WL 120763 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 3, 1980

*1 J. Y. White, M.D.

Member

Orangeburg County Board of Health

1245 Edisto N.E.

Orangeburg, South Carolina 29115

Dear Dr. White:

You have requested an opinion of this Office as to whether the Orangeburg County Administrator had the authority to discharge a county rabies control officer who had been appointed by the County Health Department. Resolution of this issue is dependent upon a construction of the Home Rule Laws (§§ 4-9-10, [et seq. of the Code of Laws of South Carolina \(1976\)](#)) with reference to those for rabies control officers (§ 47-5-40, [of the Code](#)) and the Orangeburg County Board of Health. [See](#) Act 903, Acts and Joint Resolutions of South Carolina, 1971, and Act 1032, 1970.

[Section 47-5-40](#) provides that, in those counties with boards of health, the board shall act as or appoint annually a rabies control officer. Orangeburg County currently has a county board of health the membership of which is appointed by the Governor upon the recommendation of a majority of the members of the county legislative derogation including at least one senator. Act 1032, § 2, 1970, as amended by Act 903, § 1, 1971. Acting pursuant to this authority, the Board appointed the rabies officer in question.

The power of appointment to public office carries with it the right of removal. [McEachern v. United States, 212 F.Supp. 706 \(DCSC 1963\)](#), vacated, in part, on other grounds, [321 F.2d 31 \(4th Cir. 1963\)](#). Thus, because the County Board of Health has had the power to appoint the officer it should have had the power to remove him, and should continue to have these powers unless they have been altered by the Home Rule laws.

[Section 4-9-30\(7\) of the Code](#) gives the governing bodies of the counties the responsibility ‘. . . for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government¹, but states that this authority shall not extend to personnel employed in departments or agencies under the direction of an official appointed by an authority outside county government.’ Here, the rabies control officer is currently under the direction of a county board of health appointed by the Governor, and along with the county board, he is also subject to direction of the State Board for Health and Environmental Control (DHEC). [See](#) Act 1032, § 5, 1979; §§ 44-1-170 and 44-3-10 of the Code; Opinion of this Office dated November 24, 1976; written by M. Richbourg Roberson, Assistant Attorney General; [see also](#) § 47-5-20(4). Regardless of whether county council now has the authority to appoint the county board of health under the Home Rule laws, it has not done so ([see](#) Orangeburg County Ordinance 80-2-2; [see also](#) Opinion of this Office dated December 20, 1979, written by Karen LeCraft Henderson, Senior Assistant Attorney General) and the county board continues to operate under the guidance of DHEC. [See](#) Ordinance 80-2-2 § 2. Thus, because the rabies control officer is under the direction of officials which have been appointed by outside authority, the Orangeburg County Council had no authority to dismiss him. When county council lacked that authority, the county administrator did as well. [See](#) Appx. to § 4-9-10, [et seq.](#) of the Code, as amended, and § 4-9-630 of the Code.²

*2 I apologize for the delay in responding to this matter, but time was required to research it and discuss it with other members of this staff. If I can be of further assistance, please let me know.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

Footnotes

- 1 This paragraph also gives the governing body the power to develop a personnel system for all county employees except for those elected directly by the people, but this system apparently does not grant the body employment and dismissal authority since separate provision is made for it.
- 2 No opinion is expressed herein as to whether the Orangeburg County Council has the power to appoint the members of the Orangeburg County Board of Health and, if so, whether it could then appoint or dismiss rabies control officers.

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