

1977 S.C. Op. Atty. Gen. 274 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-344, 1977 WL 24683

Office of the Attorney General

State of South Carolina

Opinion No. 77-344

November 1, 1977

*1 TO: Hoyt B. Hill, Jr.,
Director
Department of Veterans Affairs

QUESTIONS PRESENTED:

1. Does the Director of the Department of Veterans Affairs have authority to appoint a county veteran affairs officer without a recommendation from a majority of the Senators and a majority of the House members representing the county?
2. Does the Governor have authority to make the appointment?
3. May the Director of the Department of Veteran Affairs give advice to the county delegation on the appointment?
4. Would the making of a recommendation or the appointment of an officer without a recommendation subject the Director to a grievance complaint or law suit?

CITATION OF AUTHORITIES:

Cases:

[Bradford v. Byrnes](#), 221 S. C. 255, 70 S. E. 2d 228 (1952);

[Bruner v. Smith](#), 188 S. C. 75, 198 S. E. 2d 184 (1938).

Statutes:

Section 25-11-40, S. C. Code (1976)

Section 1-3-220, S. C. Code (1976)

Section 4-11-20, S. C. Code (1976)

Miscellaneous:

Att. Gen. Op. 1986 of 1966

Sutherland, Statutory Construction § 4.14 (4th ed.)

DISCUSSION:

The first question would encompass two inquiries: 1) whether the Director may make an appointment under Section 25–11–40, Code of Laws of South Carolina, 1976, without any recommendation from a majority of the county delegation, and 2) whether the county delegation can delegate their authority to the Director in order that he may select and appoint the county veteran affairs officer? On March 1, 1966 this Office issued its Opinion No. 1986 that the Director of the Department of Veteran Affairs (then the State Service Officer) had no power to select various county service officers. Rather, the county delegations make the selections and the Director appoints the persons they select. Although there have been, no judicial decisions directly dealing with this point, the South Carolina Supreme Court has construed similar provisions, in holding that the Senator must be included in the 'majority of the county delegation.' It would appear by dictum that the recommendation of the county delegation was considered by the Court as indispensable requirement for a valid appointment. See, [Bradford v. Byrnes](#), 221 S. C. 255, 70 S. E. 2d 226 (1952); [Brown v. Smith](#), 188 S. C. 75, 198 S. E. 2d 184 (1938). Therefore, these decisions would support the previous and present opinion of this Office that the Director of the Department of Veteran Affairs does not have authority to select the county veteran affairs officer, but merely appoints the officer selected by a majority of the Senators and a majority of the House members. Likewise, it is this Office's opinion that the county delegations cannot delegate to the Director the authority reposed in them by the Legislature in Section 25–11–40. Generally, if the legislature intended a particular function to be performed by designated persons because of their special qualifications, then a subdelegation is invalid. Sutherland, [Statutory Construction](#), § 4.14 at page 98 (4th ed.). Certainly, it is apparent that the legislature considered the county delegation as being best qualified to select an officer for their county; otherwise, the legislature would have placed the selection process as well as appointment powers' in the Director of the Department of Veterans Affairs.

*2 Secondly, the Governor does have the power to fill 'vacancies' in county offices. See, Sections 1–3–220(2) and 4–11–20, Code of Laws of South Carolina, 1976. Both sections of the Code provide that the officer so appointed holds the office only until the adjournment of the General Assembly.

As to the third question, there is no restriction preventing the Director of the Department of Veteran Affairs from advising the county delegation on the selection of a county officer. However, the final decision should be the independent act of the county delegation.

Finally, as to the possible legal actions which could result from the selection process, it is difficult, if not impossible, to determine such a possibility at this point in time. Certainly individuals not selected for the office would not have access to the grievance procedures if they are not county or state employees. Furthermore, since it is this Office's opinion that the Director would only be permitted to advise the county delegation as to the selection of a county officer, this Office is not aware of any possible grounds for a law suit.

CONCLUSION:

1. The Director of the Department of Veteran Affairs does not have the authority to select a county veteran affairs officer and such authority cannot be delegated to him by the county delegation.
2. The Governor can make an interim appointment to the office.
3. The Director may give advice to the county delegation but the selection must be the act of the delegation.
4. This Office can not foresee at this point the possibility of a law suit.

Assistant Attorney General

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