

1977 S.C. Op. Atty. Gen. 297 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-373, 1977 WL 24710

Office of the Attorney General

State of South Carolina

Opinion No. 77-373

November 21, 1977

*1 Mr. F. Earl Ellis,
Deputy Director
S. C. State Development Board
P. O. Box 927
Columbia, SC 29202

Dear Mr. Ellis:

You have recently asked Deputy Attorney General Frank Sloan for an opinion concerning the ability of the South Carolina Development Board to enact a by-law which would require a member of the Board to resign when he announces his candidacy for any other public office.

The qualifications for members of the Development Board are set forth in Section 13-3-40 and 13-3-50 of the 1976 Code of Laws. Section 13-3-50 prohibits a member from holding any other public office, and allows the Governor to remove a member for cause. The subject of office-seeking is not covered.

Sections 13-3-60, 70, 90 and 100 cover the powers and duties of the Board. None of these Sections authorizes the Board to pass upon or decide the criteria for its membership. The Board can only adopt rules of procedure pursuant to Section 13-3-60.

Several references to 63 Am. Jr. 2d, Public Officers, answer the question raised. § 38 states:

It is frequently said that unless excluded therefrom by some legal disqualification, all persons are normally and equally eligible to [hold] public office. . . . Generally the qualifications for holding public office are prescribed either by constitutional provision or legislative enactment.

. . . [T]he right to hold public office is a valuable one and its exercise should not be declared prohibited or curtailed except by plain provisions of the law.

Section 39 places the power to prescribe qualifications with the legislature and the constitution, not with the public agency or commission itself.

The general rule of construction is that statutes granting authority to administrative boards, commission and agencies are to be narrowly construed. Additional authority not clearly granted in the enabling legislation will not be created by implication. Therefore, since the legislature spelled out the qualifications for membership on the Development Board and did not give the Board express power to enact additional restrictions, such additional power will not be created by implication.

Further evidence showing lack of any legislative intent that the Board judge the qualifications of its own members appear in Section 13-3-50 of the Code. This Section places upon the Governor the authority to remove a member for cause. It should be noted parenthetically that the term 'cause' as used in Section 13-3-50 could under no interpretation include the commonly accepted and public minded act of offering for public office.

Therefore, based on generally accepted principles of statutory construction, the State Development Board does not have the authority to require a member of the Board of resign if he should announce as a candidate for public office.

Sincerely,

George C. Beighley
Assistant Attorney General

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