

1976 WL 30675 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 18, 1976

*1 The Honorable Hyman Rubin
Member
South Carolina Senate
Box 5506
Columbia, South Carolina 29250

Dear Senator Rubin:

You have inquired whether more than three persons may be nominated by the Richland County Delegation to succeed the incumbent commissioner whose term of office will soon expire.

The governing statute is Section 33-34, Code of Laws, 1962, which provides, in part:

‘The Legislative Delegation of any county entitled to a district highway commissioner under the provisions of this section shall nominate three suitable persons for office, one of whom shall be elected district highway commissioner—.’

It is my opinion that the statute restricts the number of nominees to three persons. The statute indicates this intent by use of the clause, ‘one of whom shall be elected.’

This problem was the subject of an opinion written in 1938 by former Attorney General John M. Daniel, who expressed the view that ‘only three persons may be nominated, and one of the three so nominated shall be elected.’ This opinion was issued within two years after the enactment of the original statute and, so far as I am aware, has consistently been followed since.

The view so expressed was followed in subsequent opinions of this Office in 1938, 1946 and 1948. In my opinion, it is a correct interpretation of the law.

A circuit court opinion by Judge Weatherford held in a similar situation that the constitutional requirement that ‘a judge’ should be elected from each judicial circuit permitted the election of more than one judge. This opinion was appealed to the Supreme Court of South Carolina which declined to consider the matter for the reason that such an opinion would be advisory only. The constitutional wording in that instance was, however, remarkably different from that existing in the instant case.

I advise that, in my opinion, Richland County may nominate only three persons to fill the vacancy in the office of district highway commissioner pursuant to the terms of Section 33-34, Code of Laws, 1962.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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