

1979 WL 43517 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1979

*1 John H. Williams, Esquire
Attorney at Law
Post Office Box 463
Aiken, SC 29801

Dear Mr. Williams:

In response to your request for an opinion from this Office as to whether or not the chairman of the Aiken County Council is the chief executive officer of Aiken County, my opinion is that he is not as hereinafter discussed.

Aiken County operates pursuant to the council-administrator form of county government. § 4-9-10(a), Appendix to Article I, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (Cum.Supp.). One of the express duties of the county administrator in the council-administrator form is:

(1) to serve as the chief administrative officer of the county government; . . . [§ 4-9-630\(1\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

As you know, the term 'administrative' has generally been construed to be synonymous with the term 'executive.' See, e.g., [People v. Salisbury \(Mich.\)](#), 96 N.W. 936 at 940; [Nissen v. City of Winston-Salem \(N.C.\)](#), 175 S.E. 310 at 313; 2 WORDS AND PHRASES 'Administrative' beginning at 664 (1955). Accordingly, the Aiken County Administrator is, by statute, the chief executive officer of Aiken County. See also, [§§ 4-9-420\(1\) and 4-9-830\(1\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

In connection with the Department of Housing and Urban Development (HUD) Community Development Block Grant Program, HUD requires that the chief executive officer of the applicant (in this case, the County of Aiken, South Carolina) sign the certification form, a copy of which is attached to your letter. 24 C.F.C. § 48.30(6). 'Chief executive officer' is defined in the pertinent HUD regulations as follows:

The chief executive officer of a unit of local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the 'chief executive officer' of a unit of local government may be: . . . ; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of local government; . . . 24 C.F.R. § 58.3. [Emphasis added.]

For the purpose of the HUD certification form, then, the term 'chief executive officer' can apparently be construed to mean either the chairman of the county governing body in a county like Aiken County, where there is no elected county executive, or the official designated as the chief executive officer by the county governing body. Although the Aiken County Council has not, at least to my knowledge, designated the county administrator to be the chief executive officer of Aiken County, State law has so designated him and that statute should be given weight in determining the proper official to execute the certification form. And, while it is true that Aiken County has no elected county chief executive officer, it does have an appointed one, again, pursuant to State law. It may be, therefore, that the designation of the chairman of the county governing body as the chief executive officer based upon the absence of an elected county executive might

only be valid where the State law has not expressly designated an appointed one, as, for example, in the council form of county government. See, §§ 4-9-310 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.

*2 Of course, a judicial determination of the question which you have posed pursuant to the Uniform Declaratory Judgments Act is the definitive method by which to resolve it. In the absence of such litigation, however, the HUD regulations themselves appear to provide the latitude necessary to determine the proper official to execute the certification form inasmuch as HUD retains the authority to approve an official of an applicant, other than the chief executive officer thereof, to sign the form, to wit:

A certification pursuant to this Part shall be addressed to the HUD officer authorized to receive the application of applicant, and shall:

(1) State the name and address of the applicant and be executed by the chief executive officer or other officer of applicant approved by HUD; . . . 24 C.F.R. § 58.30(e)(1). [Emphasis added.]

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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