

1978 S.C. Op. Atty. Gen. 139 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-106, 1978 WL 27770

Office of the Attorney General

State of South Carolina

Opinion No. 78-106

May 26, 1978

***1 Re: South Carolina Consumer Affairs Commission [Section 37-6-502](#), Code of Laws, 1976**

Where a statute prohibits membership on the governing body of a State agency of certain members having specific economic affiliations, and such members resign, they must continue in office after their resignation until their successors are appointed and have qualified.

Honorable Palmer Freeman, Jr.
Member, House of Representatives
York County
Box 128
Fort Mill, South Carolina 29715

Dear Mr. Freeman:

In my letter of May 11, 1978, directed to you, I advised you of my opinion as to what constitutes an effective majority to conduct the business of the Consumer Affairs Commission. In that opinion, I did not consider one facet of this problem which results from delay since last November and December in filling the vacancies which exist upon the Commission by reason of the resignation of several members. I have now been asked by Honorable Grady L. Patterson, Jr., State Treasurer, to consider this phase of the difficulty now facing the Commission because of its long-continued deficit in membership. I reiterate my opinion to you of May 11, 1978, which is to the effect that those members who are acting members in the circumstances now existing may conduct the affairs of the Commission. I wish to add the following comments:

Certain members of the Commission resigned from the Commission because of statutory provisions which did not permit membership on the Commission of persons affiliated with certain interests. The Supreme Court of South Carolina has stated that one who is appointed to public office must remain in that office until his successor has been elected or appointed and has qualified. The cases so holding are cited below. This principle is applicable whether or not the statutory language specifically states that members are appointed or elected and shall serve until their successors are appointed and have qualified. The only distinction between the cases setting forth this principle and the present circumstances is that the members who have resigned could not, because of statutory restrictions, be validly appointed. In my opinion, the public interest, which does not countenance an interregnum in governmental affairs, requires that the principle established in other cases is applicable in the present circumstances. Therefore, members who have resigned and have ceased participating in Commission affairs should be informed that they should remain upon the Commission. If they do not accede to this request, legal proceedings may be instituted to seek compliance. Those members who do, however, act in a continuing capacity will, in my opinion, constitute the governing body of the South Carolina Consumer Affairs Commission.

I therefore advise that efforts should be made at once to secure the participation on the Commission of those members who have previously resigned. The assistance of this Office may be called upon in the securance of such attendance. If this is unavailing, the five present acting members may function in the conduct of the affairs of the South Carolina Consumer Affairs Commission in order to avoid a lapse of governmental functions. In my opinion, a majority of those five will constitute a quorum for this purpose.

*2 With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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