

1978 WL 35050 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 18, 1978

*1 Honorable Jarvis R. Klapman
Chairman
Lexington County Delegation
125 Hendrix Street
West Columbia, South Carolina 29169

Dear Mr. Klapman:

Thank you for your letter of August 17 in which you inquire whether the members of the Registration and Elections Commission for Lexington County should be commissioned by the Governor. You also inquire as to whether the Commission is constitutionally valid.

The Registration and Elections Commission for Lexington County is created by Act No. 89, approved March 23, 1973 (73 Acts 102). Its members are appointed by a majority of the Lexington County Legislative Delegation, including the resident Senators. The statutes and Constitution of the State require that officers be commissioned by the Governor and that they take the oath of office provided by the Constitution. This mandate has been construed by the Supreme Court of South Carolina that the failure of the Governor to issue a commission to an officer does not affect the right of a person to discharge the duties of that office. [State v. Lewis, 181 S.C. 10, 186 S.E. 625.](#)

The persons appointed as required by the Act should be certified to the Secretary of State and to the Governor and appropriate proceedings will then be undertaken by either of those officers to forward the necessary documents for execution of the oath of office and, I would assume, commissioned to the office. Upon appointment, as required in the Act creating the commission, however, the individuals may then undertake the discharge of their duties under the law.

The Act must be presumed to be valid and constitutional under the decisions of the Supreme Court of this State.

I express no opinion as to circumstances that may exist should a constitutional challenge be made.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

ATTACHMENT

Members of the Registration and Elections Commission for Lexington County are appointed by a majority of the Lexington County Legislative Delegation and may undertake their duties upon such appointment; they should, however, be certified to the Governor for commissioning by him.

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