



ALAN WILSON  
ATTORNEY GENERAL

June 26, 2017

The Honorable Kirkman Finlay, III, Member  
South Carolina House of Representatives  
District No. 75  
P.O. Box 11684  
Columbia, SC 29211

Dear Representative Finlay:

You seek an opinion “on the application of S.C. Code § 57-1-330, as amended by Act No. 275 of 2016, which provides, in relevant part, that “Commissioners of the South Carolina Department of Transportation ‘may not serve more than twelve years’ in office.” You note that the entire provision states as follows:

**SECTION 57-1-330. Commissioners’ terms.**

(A) All commission members are appointed to a term of office of four years which expires on February fifteenth of the appropriate year. However, a commission member may not serve more than two consecutive terms, and may not serve more than twelve years, regardless of when the term was served. Commissioners shall continue to serve until their successors are appointed and confirmed, provided that a commissioner only may serve in a hold over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by appointment in the manner provided in this article for the unexpired term only. Except for the at large member, a person is not eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by such commission member to maintain residency in the district for which he is appointed shall result in the forfeiture of his office.

(B) The at large commission member may be appointed from any county in the State unless another commission member is serving from that county. Failure by the at large commission member to maintain residence in the State shall result in a forfeiture of his office.

Commission members may be removed from office at the discretion of the Governor subject to the prior approval of the appropriate legislative delegation.

You ask “whether the statute is to apply retroactively or prospectively concerning the inclusion of any prior years or terms of service for Commissioners who were in office before the effective date of this Act.”

### Law/Analysis

Our Court of Appeals stated in State v. Hilton, 406 S.C.580, 585, 752 S.E.2d 549, 551-52 (Ct. App. 2013), with respect to whether a statute is to be deemed prospective or retroactive:

“[L]egislative intent is paramount in determining whether a statute will have prospective or retroactive application.” State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct. App. 2009). When the legislative intent is not clear, courts “adhere to the presumption that statutory enactments are to be given prospective rather than retroactive application.” Id. at 561, 673 S.E.2d at 886-87. “[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature.” Edwards v. State Law Enforcement Div., 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011). “A statute is remedial where it creates new remedies for existing rights or enlarges the rights of persons under disability. When a statute creates a new obligation or imposes a new duty, courts generally consider the statute prospective only. Id.” [A] procedural law sets out a mode of procedure for a court to follow, or “prescribes a method of enforcing rights.” Id. at 580, 720 S.E.2d at 466 (quoting Black’s Law Dictionary 1083 (1979)).

We have addressed similar provisions to the amendment of § 57-1-330 in previous opinions. Based upon these principles, we found those provisions to be prospective only.

In Op. S.C. Att’y Gen., 1981 WL 96585 (No. 81-59) (June 18, 1981), former Attorney General McLeod addressed a term limit provision relating to the Dairy Commission as to whether such provision was prospective or retroactive. This provision stated that “[t]he term of each appointive member shall be for three years and until his successor is appointed and qualified and members shall be limited to two consecutive terms.” General McLeod wrote the following:

[b]ased on the general rule that statutes are intended to operate prospectively, unless a different result is expressed or clearly implied, and in the absence of recognized exception to the general rule, it is my opinion that statutes relating to remedies or modes of procedure may be given retroactive application as long as they do not create new rights or take away vested rights. Consequently, any terms served before the effective date of the statute may be disregarded in the application of the new amendment to the law, and they would be eligible for two consecutive terms. . . .

(emphasis added). Attorney General McLeod’s opinion was reaffirmed in Op. S.C. Att’y Gen., 2000 WL 1205937 (May 4, 2000).

### Conclusion

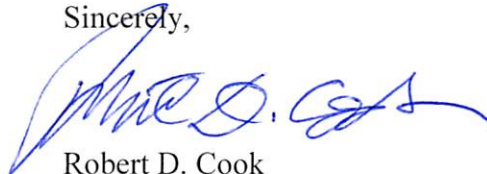
Based upon the foregoing analysis, it is our opinion that the twelve year service limitation imposed by § 57-1-330 in 2016 would be deemed by a court to be prospective. Even though there is ambiguity in the amendment, using the phrase “regardless of when the term is served,”

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and such provision might be read to suggest a retroactive application, there is no “clear legislative intent” that the General Assembly meant to apply the statute retroactively. State v. Bolin, supra. The language in question more likely means all years served as a Commissioner after the effective date “regardless of when the term is served.” In other words, this ambiguous language begs the question of whether the statute is prospective or retroactive. Given the presumption of prospective application where the statute “creates a new obligation or imposes a duty,” which the twelve year limit certainly does, we deem this provision prospective. This construction is consistent with the general rules of statutory interpretation, as well as the opinions, referenced above.

It is our opinion, therefore, that the provision imposing a twelve year service limit cumulatively is prospective only and does not count service before the effective date of the Act in 2016.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. D. Cook", with a stylized flourish extending to the right.

Robert D. Cook  
Solicitor General