

1974 WL 28103 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 31, 1974

*1 David M. Eldridge
National Service Officer
V. A. Regional Office
1801 Assembly Street
Columbia, South Carolina 29201

Dear Mr. Eldridge:

You have requested that this office advise you as to the validity of § 44-602, Code of Laws of South Carolina, 1962, which provides for the appointment of a Director of Veterans' affairs by the following procedure:

'He shall be appointed by the Governor upon the recommendation of the executive committee of the American Legion, Department of South Carolina . . .'

You specifically ask:

'We would appreciate an advisory opinion as to whether or not one segment of the veteran population, that being a private organization-the Executive Committee of the American Legion, has the right to dictate to the Governor of South Carolina without him being able to select a man of his own choice.'

Our law is clear that while the delegation of power to make a law is forbidden as necessarily involving discretion as to what the law shall be, there is no valid objection to a law which confers an authority or discretion as to its execution, to be exercised under the in pursuance of the law itself. [People ex rel v. Barnett](#), 76 ALR 1044, 344 Ill. 62, 176 NE 108; [McDougall v. Lueder](#), 156 ALR 1059, 389 Ill. 141, 58 NE 2d 899. Applying this law to the present instance, it appears that the instance delegation of authority is well within the power of the legislature, and that such delegation is within the confines of the law.

The validity of the delegation of the power of appointment to private groups has previously been the subject of judicial review, and in its general sense has consistently been upheld. 97 ALR 2d 361. Perhaps the leading case in the State on the subject is that of [Ashmore v. Greater Greenville Sewer District](#), 211 SC 77, 44 SE 2d 88, which approved the delegation by the legislature of the appointive or elective power to unofficial persons or bodies when such persons or bodies bear a rational and substantial relation to the law to be administered by the appointees or electees. Examples of judicially approved delegations include the selection of a state board of medical examiners by recommendation of three enumerated medical societies, [Re Campbell](#) 197 Pa. 581, 47 A 860; the selection of a state board of barber examiners upon the recommendation of enumerated barber societies, [Ex Parte Lucas](#) 160 Mo. 218, 61 SW 218, which incidentally, is the method used in this state; and perhaps the case most in point with the situation you posed is that of [Elrod v. Willis](#), 305 Ky. 225, 203 SW 2d 18, which approved the appointment of a disabled servicemen's board upon the recommendation of the commander of the American Legion. This case stated

'The limitation imposed by the Statute was a recognition that an organization whose objectives coincided with the objectives of the law creating the agency might render a material service to the governor by nominating men to staff that agency who were qualified by interest, experience and background.'

*2 It is felt that this case would be favorably relied upon by our court should it consider the validity of Section 44-6-2, particularly is this apparent when in this case the power was vested in one man rather than the several dictated by § 44-602.

Our legislature has approved similar delegations throughout our Code examples being, among others, two members of the Board of Visitors of the Citadel being elected by the Association of Citadel Men; Judges of Juvenil-Domestic Relations Courts being recommended by members of the respective County Bar Associations, and many others.

It, therefore, appears that the vast preponderance of legislative and judicial authority supports delegations of authority similar to that expressed in Section 44-602, and that if such were considered by our Court, it would be similarly approved.

Based upon the foregoing authority and laws, the opinion of this office can only be that Section 44-602 would constitute a valid delegation of authority.

I trust this has been sufficient to answer the question which you posed, if we may be of any further assistance please do not hesitate to call or write.

Sincerely yours,

A. Camden Lewis
Assistant Attorney General

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