

1974 WL 27228 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1974

*1 The Honorable Barbara Sylvester
510 Camelia Circle
Florence, South Carolina

Dear Mrs. Sylvester:

You have inquired as to whether your appointment to succeed yourself as a member of the Board of Youth Services, made on July 23, 1974, is a valid appointment.

It is my understanding that the following facts exist in your case:

You were appointed as a member of the Board of Juvenile Corrections (now designated as the Board of Youth Services) in 1969 following the enactment of Act No. 386, approved July 3, 1969, with a term to expire in 1974. You were recently appointed to succeed yourself as a member of the Board of Youth Services for a term to expire June 30, 1979.

It is my opinion that, as a member of the Board of Juvenile Corrections appointed in 1969 pursuant to the provisions of Act No. 386, you were eligible to succeed yourself as a member of the successor Board of Youth Services at least one time. The basis for this conclusion is set forth below.

The Board of Industrial Schools existed since 1946 when its name was changed to the State Board of Juvenile Corrections in 1966, the latter Act making no substantive changes concerning the powers and authority of the Boards or affecting the constitution of its membership. In 1969 Act No. 386 effected significant changes in the membership of the Board, as well as in its powers. The 1969 Act eliminated restrictions upon the number of members of the Board of the same sex who could be appointed and added one additional voting ex officio member of the Board and one additional nonvoting ex officio member. The Act also created the State Board of Juvenile Placement and Aftercare and vested it with certain correlative powers and functions. With respect to each of these Boards, Act No. 386 provided in Section 3 thereof:

‘All terms of members of the Board of Juvenile Corrections serving on the effective date of this act shall expire thirty days thereafter and a new board shall be appointed to take office on that date.

‘Notwithstanding the provisions of Sections 55-50 and 55-50.20 of the 1962 Code, members of the Boards of Juvenile Corrections and Juvenile Placement and Aftercare created in those sections shall be appointed initially for terms of one, two, three, four and five years, with the length of terms designated in their appointments and the provisions of Section 55-50, prohibiting a member of the Board of Juvenile Corrections from succeeding himself, shall not apply to the initial board appointed in accordance with this section.’

It is my opinion that the provisions of the preceding statute which exempts ‘the initial board appointed in accordance with this section’ from the application of Section 55-50 of the Code, which, in turn, restricts reappointment of members of the present Board of Youth Services from succeeding themselves until two years after the expiration of their terms, has reference to the members of the Board of Youth Services appointed under the provisions of Act No. 386 of 1969. Act No. 386 of 1969 established a new concept for providing juvenile correctional services under the direction of two boards; one of them being a remodeled older board with different membership and expanded functions, the other being completely newly established. It is my opinion that the members of these two boards appointed under the terms of the 1969 Act are the initial boards referred to in Section

3 thereof. Reference to the 'initial board' in that section seems to refer to the Board of Juvenile Placement and Aftercare and the members of that board, appointed in 1969, would of necessity constitute the initial board in that there was no predecessor board of Juvenile Placement and Aftercare.

*2 A valid constitutional reason for exempting those initial boards from restrictions contained in Section 55-50 appears from the fact that each of these boards was subject to provisions for staggering of initial terms. The Legislature could reasonably conclude that members appointed for terms varying from one to five years should be permitted to succeed themselves at least once. I am of opinion, however, that the initial members of the boards referred to will, after their second appointment, no longer be exempt from the restrictions of Section 55-50 which prohibit membership until two years after the expiration of their preceding term. This circumstance does not now present itself and its resolution may be subject to future clarifying judicial opinions or legislation.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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