

1973 WL 27619 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 1, 1973

*1 Mr. Thomas M. Boulware
Messrs. Brown, Jefferies & Boulware
Attorneys at Law
Bankers Trust Building
Post Office Box 248
Barnwell, South Carolina 29812

Dear Tom:

I am sorry that for some reason we have not replied to your letter of July 26, 1973, but we do not find it as having been logged to any attorney in the Office.

Your inquiry concerns a letter received by you from Mr. George Inabinet, County Commissioner, and the question has reference to appointment of members to the Welfare Board, Registration Board, etc., the issue being as to the powers possessed by the Board of Commissioners with respect to these offices.

Section 4 of Act No. 603 (67 Acts 1134) codified as Section 14-951, et seq., Code of Laws, 1962, provides that the Board of Commissioners shall have the authority:

‘to exercise all powers of appointment and recommendations for appointments made by the Governor which were exercised by the Senator and the Members of the House of Representatives representing the County, the Senate, or the County Legislative Delegation prior to the effective date of this Act, except those provided for in the Constitution.’

The foregoing provision, in my opinion, has the effect of substituting the Board of Commissioners in lieu of the Senator and Members of the House with respect to appointments and recommendations for appointments to various offices. A typical illustration is one which has been inquired about, to wit, the Board of Registration, which is submitted to the Senate by the Governor ‘upon the written recommendation of the Senator from the County.’ The power to make the recommendation to appointment to the office of member of the Board of Registration is, in my opinion, now vested by the terms of Section 14-951, as amended, in the Board of Commissioners for Barnwell County. I am of opinion, however, that the advice and consent of the Senate must be obtained as required by Section 23-51 of the Code for such appointments to become effective. This ratifying power still continues, as does the ratifying power with respect to the appointment of magistrates. I am not aware of any constitutional officers appointed upon recommendation, but whatever procedures may exist in this respect will continue, however, as they are controlled by the terms of the Constitution and cannot be changed by the Legislature.

With respect to the additional question presented, I advise that the Constitution, as well as Section 14-951, gives to the Board of Commissioners the authority to approve or disapprove roads to be paved by the South Carolina Highway Department. The Supreme Court of this State has held that this is an executive function which cannot properly be undertaken by the legislative branch.

Very truly yours,

Daniel R. McLeod
Attorney General

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