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HENRY MCMASTER
ATTORNEY GENERAL

February 6, 2006

The Honorable Vida O. Miller
Member House of Representatives
P.O. Box 3157
Pawleys Island, SC 29585

Dear Representative Miller:

In a letter to this Office, you referenced the Georgetown County Legislative Delegation recently reappointed the Georgetown County Board of Elections and Registrations ("the Board"). We presume this appointment was pursuant to Act No. 200 of 2005, which indicates appointments are to be made as provided in Act No. 591 of 1994. Act No. 591 provides the Governor, upon the recommendation of the Georgetown County Legislative Delegation, appoints the members of the Board. Further, you indicated the Board hired a new director who will begin her duties this month.

You stated the Board adopted its current bylaws in 2001 in accordance with a county ordinance requiring boards and commissions to adopt such. You further stated issues have arisen regarding the revision of these bylaws and the election of officers in light of the failure of either Act No. 200 or Act No. 591 to specifically address those issues. As you noted, the only provision specifically referencing the matter of officers is the provision in Act No. 591, which states the legislative delegation chooses chairman of the Board. In light of such, you asked whether the current bylaws remain valid and whether the Board is authorized to change or adopt new bylaws. You also questioned whether the Board is authorized to elect new officers, other than that of chairman.

As to the bylaws, in our opinion, inasmuch as there are no apparent provisions indicating otherwise, the current bylaws would remain valid until changed or the adoption of new bylaws. As to your questions of whether the Board is authorized to change or adopt new bylaws and elect new officers, as you have stated, apparently there are no specific provisions referencing the changing of such bylaws or electing officers, other than chairman. However, generally, a board or commission has implied authority to conduct business, which would include the adoption of bylaws and the election of officers, as such matters are reasonably necessary for the work of a board or commission. As stated in a prior opinion of this Office dated August 1, 1961, "[i]n addition to the express powers which . . . (a) . . . board or commission might have, these governmental bodies have such implied

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powers as are necessarily inferred or reasonably necessary to make effective the express powers granted to them.” See also 81A C.J.S. States, §§ 224 and 249 (stating boards and commissions have such powers as have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them). Consistent with such, the Board has implied authority to change or adopt new bylaws and to elect officers except for the office of chairman, which is chosen by the legislative delegation.

As to your question of whether the delegation may give the Board specific authority to elect officers and adopt new bylaws, in our opinion, no authority exists for such on the part of the delegation. As stated in a prior opinion of this Office dated July 11, 1983,

A county legislative delegation then, has no inherent powers, and cannot exercise sovereign power absent a delegation of authority to it by the General Assembly. See State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972). Put simply, ‘[D]elegations are bodies and agencies to carry into effect the fully enacted law.’ State v. Lewis, 181 S.C. 101, 186 S.E. 625, 635 (1936).

In the 1983 opinion, we noted our research failed to reveal any authority empowering the Horry County Legislative Delegation to create a Blue Ribbon Committee. Thus, this Office determined the Horry County Legislative Delegation’s actions in creating such a committee void. Additionally, the 1983 opinion noted the delegation of power in under certain circumstance created a risk of violating the South Carolina Constitution due to an unconstitutional delegation of powers. As referenced in that opinion, in Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257 (1938), the Supreme Court enjoined certain actions of the Greenville County Legislative Delegation explaining the only permissible exercise of legislative functions by a county delegation is “the performance of . . . duties . . . in efficient enforcement and execution of a complete law.”¹

Based on the rationale in the 1983 opinion, because there is no legislative authority empowering the Georgetown County Legislative Delegation to grant the Board authority to elect officers and adopt new bylaws, any attempt to do so by that legislative delegation would be void. Moreover, as explained in the 1983 opinion, the attempt to do such may raise constitutional issues.

¹ Of course, certain delegations of power to county delegations have traditionally been held to be constitutional. For example, election and appointment to office has been held to be a valid delegation of power to county delegations. See State v. Bowden, 92 S.C. 393, 396, 74 S.E. 866, 870 (1912).

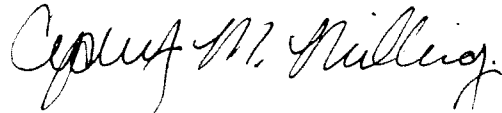
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While, in our opinion, the Board has implied authority for to elect officers and adopt new bylaws, we find the better practice would be for enactment of specific statutory authority granting the Board such authority.

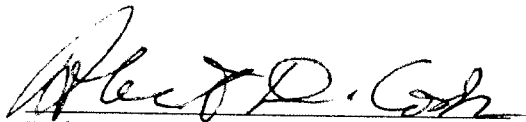
Very truly yours,



Cydney M. Milling

Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General