

From: Taylor, Richele
To: KatiePhilpott@gov.sc.gov <KatiePhilpott@gov.sc.gov>
Date: 8/23/2016 12:12:21 PM
Subject: FW: Response to inquiry regarding appointment power

From: Melina Mann [<mailto:Melina.Mann@llr.sc.gov>]
Sent: Tuesday, August 23, 2016 8:28 AM
To: Taylor, Richele
Subject: FW: Response to inquiry regarding appointment power

Melina Mann

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From: David Jones [<mailto:DJones@scag.gov>]
Sent: Thursday, August 18, 2016 11:17 AM
To: Melina Mann
Subject: Response to inquiry regarding appointment power

***** SCDLLR NOTICE *** This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links inside the email.**

Dear Ms. Mann:

I enjoyed the opportunity to speak with you by phone yesterday, and I appreciate that you have solicited our thoughts on a certain area of law. I understand that you are carefully considering the implications of previous case law in South Carolina for the practices of certain professional associations in connection with the Governor's power of appointment. You specifically mentioned the scenario where, for example, the Governor is authorized by statute to appoint from a list provided by an association, which presents a list consisting of one person. You also noted that you believe that statutes such as S.C. Code Ann. § 40-22-10 may improperly infringe on the Governor's power of appointment.

In the course of our conversation, you mentioned the line of cases beginning with *Gold v. State Board of Examiners in*

Psychology, 271 S.C. 74, 245 S.E.2d 117 (1978). I spoke with Bob Cook, and we believe that *Gold* remains good law, notwithstanding the distinction made by the Court in *Hartzell v. State Board of Examiners in Psychology*, 274 S.C. 502, 265 S.E.2d 265 (1980). Depending on the particular statute, and perhaps depending on the practices of an association also, it does appear that a "list of one" could give rise to an evil of the kind addressed in *Gold*. Bob Cook also noted that you might consider *State ex rel. Riley v. Pechilis*, 273 S.C. 628, 258 S.E. 2d 433 (1979). Although some time has passed since the Supreme Court issued these precedents, we believe that both *Gold* and *Pechilis* remain important bulwarks against efforts to improperly infringe on the appointment power of the Governor.

My initial survey revealed that our opinions in this area approach each individual statute with a nuanced analysis which is necessarily specific to the language of that statute in light of the South Carolina Constitution, relevant cases, and other applicable law. Accordingly, I cannot recommend any particular opinion to you as controlling without a definite, specific inquiry. If you need an opinion of our Office on a particular statute, and if we have not issued a prior opinion on that statute or one similarly worded, then of course you may submit a written request for a formal opinion addressed to the Attorney General. As you no doubt are aware, our Office responds to a steady stream of such requests, and it may take some time to respond with an opinion which is crafted with the care and precision that a question such as yours would require.

It is clear, however, that you are intimately acquainted with the contours of the statutory and constitutional powers of the Governor with respect to appointments upon the recommendations of professional associations. I have no doubt that LLR will benefit from your advice and counsel in this area, even if we have not published a prior opinion that speaks directly to a particular statute.

I note that these are only my personal, "off-the-cuff" thoughts, and not a formal opinion of the Office. I can only speak to the facts as you present them, and our Office cannot determine facts. I hope that you have found this helpful and responsive. I enjoyed looking into this issue, and I look forward to hearing from you in the future.

Once again, thank you very much for reaching out to our office.

Sincerely,

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