

December 8, 2011

MEMORANDUM

TO: The Board of County Commissioners
CC: Lowell L. Siler, County Attorney, Mike Ruffin, County Manager
FROM: Jimmie B. Hicks, Jr., Esquire
DATE: December 8, 2011
SUBJECT: Legal Opinion Summary Related to the Department of Social Services

Further to your request for a Legal Opinion related to the Department of Social Services, please find my opinions below:

Issue No. 1.

APPOINTMENT OF GAIL PERRY TO THE BOARD OF SOCIAL SERVICES

After extensive inquiry, there was no evidence or indication that there were any legal issues related to Ms. Perry's appointment to the Board of Social Services. Nor was there any evidence or indication that the three ballots giving a majority vote to Gail Perry to serve on the Board of Social Services were executed other than by the Commissioners in question. Therefore, this concern is unsubstantiated.

Issue No. 2

ACCUSATIONS OF AN ILLEGAL MEETING BETWEEN JOE BOWSER, STAN HOLT,
AND GAIL PERRY

The meeting on July 10, 2011 between Joe Bowser, Stan Holt and Gail Perry did not constitute an illegal meeting. Since Ms. Perry had not taken her oath at the time of the meeting in question, Ms. Perry was not a member of the Board of Social Services at the time of the meeting. As only two members of the Board of Social Services were present (Mr. Bowser and Mr. Holt), which is not a majority of the Board, this meeting did not constitute an "official meeting" subject to the Open Meetings Laws.

Issue No. 3

WHETHER GAIL PERRY HAD A CONFLICT OF INTEREST IN VOTING TO TERMINATE
DSS DIRECTOR GERRI ROBINSON IF MS. PERRY KNEW SHE COULD BENEFIT
PERSONALLY FROM THE DECISION

This issue raises the question of whether the appointment of Ms. Perry to the position of interim Director, while she was still a member of the Board of Social Services, constituted a conflict of

interest in and of itself, without regard to its connection with the termination of Ms. Robinson. Evidence suggest that since Ms. Perry was still a member of the Board of Social Services at the very moment she was appointed interim Director, such an appointment likely constitutes a violation of G.S. Section 14-234, even though she resigned shortly thereafter. However, based on the interviews conducted and a review of the documentation provided during this process, it is our impression that there is no indication that Ms. Perry or the Board of Social Services acted in any way with the intent to violate this statute. The actions appear to have been made in good faith, attempting to further the best interests of the Department of Social Services in appointing an interim Director, the absence of which would have had a profound detrimental impact on the operations of the Department. Likewise, it appears that the Board was not aware of the applicability of G.S. Section 14-234 under the very unique (and fluid) way and manner in which this matter progressed, as this statute is almost always applied in the context of a contract for construction, equipment, supplies or third-party services.

If you have questions or require anything further of me in this regard, please advise accordingly.

Sumrell, Sugg, Carmichael, Hicks & Hart, P.A.

A handwritten signature in black ink, appearing to read "Jimmie B. Hicks, Jr.", with a long, sweeping horizontal line extending to the right.

Jimmie B. Hicks, Jr.
For the Firm