



HENRY McMASTER
ATTORNEY GENERAL

April 4, 2006

Joseph C. Good, Jr., General Counsel
Medical University of South Carolina
Post Office Box 250204
Charleston, South Carolina 29425

Dear Mr. Good:

We received your letter concerning section 59-123-40 of the South Carolina Code. From your letter, you believe this section allows the Governor or his designee as a member of the Medical University of South Carolina's Board of Trustees (the "Board"), as well as the Governor's appointee to the Board, to vote on issues before the Board. You also indicate "a member of our Board of Trustees disagrees with me and requests an opinion from your office." Thus, you request an opinion of this Office addressing the following two questions:

1. Pursuant to the above referenced code section, does the Governor or his designee have a vote on MUSC's Board of Trustees and does the Governor's appointee have a vote
2. The second inquiry is a request that your office confirm that all State universities interpret their statutes as giving the Governor and his appointee (if one is provided for) a vote on their Boards.

After a review of the relevant statutory authority and employing the rules of statutory interpretation, we find you are correct in your determination that the Governor or his designee, as the case may be, and the member appointed by the Governor may vote on matters that come before the Board. With regard to your second question, we find it beyond the scope of an opinion of this Office.

Law/Analysis

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Buist v. Huggins*, 367 S.C. 268, ___, 625 S.E.2d 636, 640 (2006). "Words used in a statute should be given their plain ordinary meaning." *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 519, 623 S.E.2d 387, 392 (2005). "When a statute's terms are clear and unambiguous on

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their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Johnston v. South Carolina Dep’t of Labor, Licensing, and Regulation, 365 S.C. 293, 296, 617 S.E.2d 363, 364 (2005). Additionally, when no ambiguity exists, words must not be added to or taken from the statute. Home Building & Loan Ass’n v. City of Spartanburg, 185 S.C. 313, 321, 194 S.E. 139, 142 (1937). “Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative.” Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000).

Chapter 123 of title 59 of the South Carolina Code (2004) governs the organization and administration of the Medical University of South Carolina. Section 59-123-40, in this chapter, describes the composition of the Board as follows:

The management and control of the university shall be vested in a board of trustees, to be composed as follows: The Governor (or his designee), ex officio, twelve members to be elected by the General Assembly in joint assembly and one member to be appointed by the Governor. The Governor shall make the appointment based on merit regardless of race, color creed, or gender and shall strive to assure that the membership of the board is representative of all citizens of the State of South Carolina.

The plain wording of this statute does not indicate an intention by the Legislature to restrict certain members from voting. Furthermore, we reviewed sections 5-123-50 of the South Carolina Code (2004), dealing with the election of board members and their terms of office, and 5-123-60 of the South Carolina Code (2004), stating the powers of the Board. Neither of these statutes indicated an intent by the Legislature to prohibit certain members from voting. Thus, under the plain wording of these sections, we find no indication that either the Governor, his designee, or the member appointed by the Governor to the Board is prohibited from voting on matters before the Board. In addition, we believe to read these statutes as prohibiting certain members from voting would result in impermissibly adding a term to these statutes not expressed by the Legislature.

Section 59-123-40 establishes the Governor or his designee’s membership on the Board as ex officio. In a prior opinion, we explained the meaning of the phrase “ex officio” as: “[f]rom office; by virtue of the office’ or ‘[f]rom office; by virtue of office; officially. A term applied to an authority derived from official character merely, not expressly conferred upon the individual, but rather annexed to the official position.” Op. S.C. Atty. Gen., May 27, 2004 (quoting Lobrano v. Police Jury of Parish of Plaquemines, 150 La. 14, 90 So. 423 (1921)). We also addressed an ex officio member’s authority to vote in that opinion, finding: “While ex officio members are often designated as non-voting members, the fact that an ex officio member may vote is not a factor to defeat ex officio membership; an ex officio member of an entity is a member for all purposes, including voting, unless the enabling legislation directs otherwise.” Id. See also Op. S.C. Atty. Gen., March 13, 2003; Op. S.C. Atty. Gen., July 18, 1989; Op. S.C. Atty. Gen., January 3, 1985; Op. S.C. Atty. Gen., March 4, 1976. Section 59-123-40 does not designate the Governor or his designee

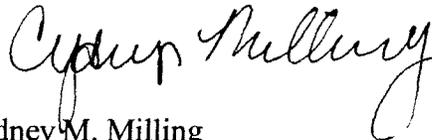
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as a non-voting member. Moreover, section 59-101-40 of the South Carolina Code (2004), contained in the general statutory provisions for colleges and universities, states the president of a student body may be ex officio member of a state-supported institution's board of trustees. However, this statute specifies, if the president of the student body is a member, he or she is "a nonvoting member of the board of trustees of the institution he attends and represents." S.C. Code Ann. § 59-101-40. Thus, in light of our prior opinions and in reading section 59-123-40 in conjunction with section 59-101-40, we believe the Governor or his designee is not limited in his or her voting power.

With regard to your second question pertaining to how other state universities interpret section 59-123-40, we find this inquiry to be beyond the scope of an opinion of this Office. As we acknowledged on numerous occasions, this Office does not have the authority of a court or other fact-finding body, and therefore, it is unable to adjudicate or investigate factual questions. Op. S.C. Atty. Gen., April 16, 2004. Your second question, as you posed it, is factual in nature and thus, cannot be addressed in an opinion of this Office.

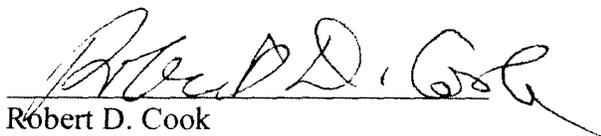
In conclusion, based on the plain reading of the statutes pertaining to the Board, we find no indication of the Legislature's intention to prohibit the Governor, his designee, or the member of the Board appointed by the Governor from voting on matters that come before the Board. Furthermore, despite the Governor or his designee's status as an ex officio member of the Board, employing the rules of statutory interpretation and based on our prior opinions, we believe this status does not impact his or her ability to vote.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General