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HENRY McMASTER  
ATTORNEY GENERAL

May 8, 2006

Bill Starr, Chairman  
Goose Creek Recreation Commission  
Post Office Box 39  
Goose Creek, South Carolina 29445

Dear Mr. Starr:

We understand from your letter that you, on behalf of the Goose Creek Recreation Commission (the "Commission"), request an opinion of this Office regarding the absence of a commissioner due to military service. You state:

The Goose Creek Recreational Commission is a special purpose district comprised of a seven member volunteer board. Our by laws indicate a that if a Commissioner misses a certain number of meetings, that Commissioner can be dismissed.

We have a Commissioner that has been absent for approximately one (1) year because he was called to duty in the Reserves. We do not know if and when he can return to the Commission.

Thus, you request an opinion regarding the Commission's obligations to this commissioner and whether he "[c]an he be replaced temporarily or should he resign?"

#### Law/Analysis

Chapter 7 of title 8 of the South Carolina Code addresses issues involving the absence of public officers and employees due to military service. S.C. Code Ann. §§ 8-7-10 et seq. (1986 & Supp. 2005). Section 8-7-30 of the South Carolina Code (1986) provides:

The absence of any officer from his office or position caused by his being in the military service shall not create a forfeiture of or vacancy in the office or position to which such officer was elected or appointed but shall be construed merely to create a temporary

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vacancy. Wherever the terms "forfeiture of office" or "vacancy in office" or other words of similar import are used in any law of this State in relation to an officer they shall be construed in accordance with the provisions of §§ 8-7-10 to 8-7-80 and shall not be construed to apply to any absence of such officer who is absent from his office or position by reason of his being in the military service. An officer who is present at and able to perform the duties of his office shall not be considered absent within the meaning of this section.

Section 8-7-10(1) of the South Carolina Code (1986) defines "officer" as "officer or employee of the State or any political subdivision thereof who is elected or appointed for a definite term which is fixed by law . . . ."

We understand the Commission was formerly known as the Goose Creek Park Playground Commission. Based on our research of the enabling legislation creating the Commission and the subsequent amendments, we discovered the Commission is composed of seven members who are appointed by the Governor upon the recommendation of a majority of the Berkeley County Legislative Delegation. 2000 S.C. Acts 3586. The members are to serve a four-year term. Id. Thus, we believe the commissioner is an officer pursuant to section 8-7-10(1) of the South Carolina Code. Therefore, the commissioner's absence may not, under section 8-7-30, result in the forfeiture of his position on the Commission despite a provision indicating otherwise in the Commission's by-laws.

Section 8-7-40 of the South Carolina Code provides for the appointment of a person to fill the temporary vacancy created by the absent officer. This provision provides:

In case a temporary vacancy is created in any office or position by reason of the absence of the officer in the military service the appointive authority shall appoint some person to fill temporarily the office or position to which such officer was elected or appointed. All such appointees shall hold the office or position which they are temporarily to fill during the absence of the officer in the military service or until the expiration of the term for which such officer in the military service was elected or appointed, whichever period of time is the shorter.

S.C. Code Ann. § 8-7-40. Section 8-7-10(3) of the South Carolina Code (1986) states "the appointive authority" means

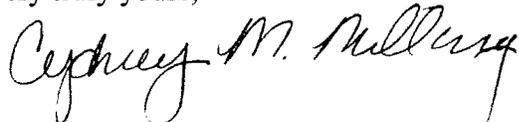
(a) the person, board, commission or other authority originally electing or appointing the officer, (b) if the officer was elected to his office in a general election or nominated in a primary, the Governor of the State, with the advice and consent of the Senate, if the officer

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is a State official or employee, (c) the Governor, upon the recommendation of the county legislative delegation, if the officer is an official or employee of a county or any of its political subdivisions and (d) the Governor, upon the recommendation of the mayor and city council or other governing body of a city or town if the officer is an official or employee of a municipality.

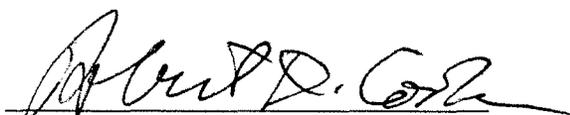
In a prior opinion of this Office, we determined that section 8-7-40 requires the appointive authority to appoint someone to fill the officer's temporary vacancy. Op. S.C. Atty. Gen., October 31, 2005. Additionally, we concluded: "the appointee holds the position during the absence of the officer in military service or until the regular expiration of the term of office for that position, whichever term is shorter." *Id.* As we previously stated, the commissioners are appointed by the Governor upon the recommendation of a majority of the Berkeley County Legislative Delegation. Thus, we presume the Governor is charged with the duty of appointing a temporary appointee to fulfill the commissioner's term until he returns or until his term expires.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General