

May 18, 2007

Marci Andino, Executive Director  
South Carolina Election Commission  
Post Office Box 5987  
Columbia, South Carolina 29250

Dear Ms. Andino:

We issue this opinion in response to a letter you submitted to our Office concerning the meeting requirements for the certification of election results. In your letter, you state:

SC Code of Laws Section 7-17-220 states “. . . the Board of Canvassers shall meet at the office of the Election Commission . . . for the purposes of canvassing the vote . . .” Commission members meet in the office to certify statewide primaries and general elections. Because of the frequency of special primaries and elections to fill vacancies, the commission would like to either meet via conference call, authorize the Executive Director to certify on their behalf or have members from Columbia present and other members join by conference call.

Based upon this information, you ask us to provide the Election Commission with guidance on this matter.

### **Law/Analysis**

Article 3 of chapter 17 contained in title 7 of the South Carolina Code pertains to the functions of the Board of State Canvassers (the “Board”), which according to section 7-17-210 of the South Carolina Code (1976), consist of the State Election Commission. As you mentioned in your letter, section 7-17-220 of the South Carolina Code (Supp. 2006) pertains to meetings held by the Board. This provision states:

Unless otherwise provided in § 7-3-10(c), the Board of State Canvassers shall meet at the office of the Election Commission within ten days after any general election for the purpose of canvassing the vote for all officers voted for at such election,

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including the vote for the electors for President and Vice-President, and for the purpose of canvassing the vote on all Constitutional Amendments and questions and other issues.

S.C. Code Ann. § 7-17-220. Section 7-3-10(c) of the South Carolina Code (Supp. 2006) governs meeting of the State Election Commission and provides: “The commission shall meet at its offices in Columbia at least once each month or at such times as considered necessary by the commission. However, the commission may change the location of the meeting if the change is more convenient for the commission or any parties scheduled to appear before the commission.”

In considering whether the Board may meet via conference call, we look to the rules of statutory interpretation.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Sloan v. Hardee, 371 S.C. 495, \_\_\_, 640 S.E.2d 457, 459 (2007).

In prior opinions, this Office recognized a public body’s ability to conduct meetings via telephone conference call. Ops. S.C. Atty. Gen., March 14, 2007 (State Workforce Investment Board); August 25, 2005 (City of Tega Cay City Council); January 21, 1992 (Joint Appropriations Review Committee); March 25, 1981 (South Carolina Mining Council); November 17, 1980 (South Carolina Mining Council). In these opinions, we primarily relied on the provision in the South Carolina Freedom of Information Act defining meetings as “the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” S.C. Code Ann. § 30-4-20(d) (2007). We concluded in the absence of a statute requiring it to meet physically in a certain place, this provision authorizes a public body to meet by means of a telephone conference call so long as the public body complies with the other provisions of the South Carolina Freedom of Information Act. Op. S.C. Atty. Gen., January 21, 1992.

Section 7-17-220 calls for the Board to meet “at the office of the Election Commission . . .,” unless otherwise provided in section 7-3-10(c). Section 7-3-10(c) requires the Election Commission

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to also meet at its offices or at a more convenient location. Thus, these provisions do not contemplate a meeting of the Board via telephone conference call. Further, sections 7-17-220 and 7-3-10(c) specify the location at which the Board, or the Commission as the case may be, shall meet. Accordingly, while we generally find public bodies may conduct meetings via telephone, because the statute specifies the Board's meeting shall be held at the Election Commission or another specified location more convenient for the Board, we believe the Legislature intended for this body to physically meet. Therefore, we do not believe the Board may meet via a telephone conference call.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General