

October 17, 2007

Charles J. Boykin, Esquire
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Dear Mr. Boykin:

We received your letter requesting an opinion of this Office pertaining to the election of officers to the Fairfield County School Board (the "Board"). We understand from your letter that you represent the School District of Fairfield County (the "District") and wish to request an opinion on the Board's behalf regarding the terms of office for the Board's Chairman, Vice-Chairman and Secretary. According to your letter, the Board adopted a policy entitled "Organization of the School Board, Code BD," which you state provides as follows:

The officers of the Board of Trustees are Chairman, Vice-Chairman, and Secretary. Officers will be elected every other even year and sworn in at the Board's organizational meeting held in November. The Superintendent presides and acts as temporary Chairman at the meeting until such time as Chairman is elected. The Board swears in the new members, elected officers and swears in those members at the meeting.

Officers will be elected by the majority vote of the Board.

Officers will perform their duties as outlined in BD-R.

You informed us that the Board would like to revise this policy "to allow its officers to serve one-year terms" and state: "Should the Board make such a change, it will cut short the terms of office for the current Chairman, Vice-Chairman, and Secretary. This reorganization, however, will not alter the term of any member of the Board of Trustees. It would only alter the length of service as an officer of the Board." Thus, you question "whether the Board may amend its policy to allow its officers to serve for one year, and in so doing cut short the terms of office of persons who are currently elected to serve two-year terms, as officers of the Board."

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Law/Analysis

Chapter 19 of title 59 of the South Carolina Code governs school trustees. Among the general provisions governing members of school boards of trustees is section 59-19-70 of the South Carolina Code (2004), which instructs boards of trustees to appoint a chairman and a clerk for the board. This provision states:

The trustees shall, as soon as practicable after the appointment of any new trustee, organize by the election of one of their members as chairman and another as clerk of the board. The chairman shall preside at meetings of the board and perform other duties imposed on him under the law, and the clerk shall keep a record of the proceedings of all meetings in a book provided for that purpose and perform all other duties required of him by law.

S.C. Code Ann. § 59-19-70. You state in your letter that the policy referenced above was adopted in order satisfy this statutory requirement.

While section 59-19-70 states that school boards of trustees must elect a chairman and a clerk among their members, it does not mention a vice-chairman or secretary or establish a term for any office held by a board of trustees member. Moreover, we found no other general provision pertaining to officers of board of trustees or any provision in the District's enabling legislation discussing this matter. However, as you point out, in this instance, the Board adopted its own policies governing officers of the Board, which provides for a two-year term.

In a recent opinion, we addressed the general powers of boards and commissions to adopt bylaws and elect officers. Op. S.C. February 6, 2006. In that opinion, we were asked to address whether the Georgetown County Board of Elections and Registrations could revise its bylaws to, among other things, allow for the election of officers. Id. We noted that the enabling legislation establishing this board only provides for the selection of a chairman and does not speak to other offices on the board. Id. Nonetheless, we looked to the implied power of the board to conduct business as a means by which the board is authorized to elect officers. Id.

[G]enerally, a board or commission has implied authority to conduct business, which would include the adoption of bylaws and the election of officers, as such matters are reasonably necessary for the work of a board or commission. As stated in a prior opinion of this Office dated August 1, 1961, “[i]n addition to the express powers which . . . (a) . . . board or commission might have, these governmental bodies have such implied powers as are necessarily inferred or reasonably necessary to make effective the express powers granted to them.” See also 81A C.J.S. States, §§ 224 and 249 (stating boards and commissions have such powers as have been delegated to

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them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them). Consistent with such, the Board has implied authority to change or adopt new bylaws and to elect officers except for the office of chairman, which is chosen by the legislative delegation.

Id.

Based on this opinion and the fact that boards and commissions generally have authority to create their own policies or bylaws, as the case may be, we believe the Board's decision to elect officers is within its authority to conduct the Board's business. As such, we also believe the Board, having created the policy calling for the election of officers, also has authority to change this policy by shortening the length of the officers' terms.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General