



ALAN WILSON  
ATTORNEY GENERAL

June 26, 2013

The Honorable R. Shannon Riley  
Member, House of Representatives  
6309 Highway 35 North  
Hodges, South Carolina 29653

Dear Representative Riley:

Attorney General Alan Wilson has referred your letter of February 8, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

**Issue:** As quoted by your constituent included in your letter:

*"It is my understanding your office may provide Law opinions regarding Home Owner Associations (HOAs) operating under the South Carolina Nonprofit Corporation Act as per Section 33-31-171 of the Act. The enclosure addresses specific concerns I have with our Board's handling of a Special Tax District (STD) and voting rights matter. We are an incorporated nonprofit HOA consisting of single-family homes located in the County of Greenwood, SC. We are governed by the South Carolina Nonprofit Corporation Act, Articles of Incorporation, CCR&Es, Bylaws, and a BoD. Our Board compensates a property management company for limited administrative services and periodic legal opinions concerning Association matters. Our Subdivision consists of 264 lots. ... I respectfully request an opinion by your Office regarding the [the following questions]:*

- 1) *Did the [Harborside Subdivision Homeowner Association, Inc.'s] Board contravene the intent of Section 33-31-1021 of the South Carolina Nonprofit Corporation Act by not notifying our members or taking a vote prior to implementing the [2011 Special Tax District] initiative [suggested by Greenwood County Council]?*
- 2) *Is it lawful and ethical for our [Harborside Subdivision Homeowner Association, Inc.'s] Board to assign STD [Special Tax District] Commissioners from within the [Harborside Subdivision Homeowner Association, Inc.'s] Board, or should they have assigned Commissioners from outside the Board?*
- 3) *Should the [Harborside Subdivision Homeowner Association, Inc.'s] Board aggressively pursue collection of the full amount of fees legally owed to our Association IAW Article III (b) of the Association's bylaws and its Resolution 2012-02; and should that action include carrying forth legal proceeding under Law for a right-to-cure lien on the properties that would compel payment of all accrued amounts in arrears once the property is transferred or sold? Although costly, those actions can be bundled to reduce cost.*

- 4) *Our Covenants state "in the event a Lot is owned by more than one person, all persons owning one Lot shall together have one vote on Association matters." Our Covenants are silent as to voting policy by persons owning more than one Lot. Our Covenants also state that voting rights will be IAW the articles of incorporation and bylaws. However, we had no bylaws in the Board's first year. Such being the case, I believe we should have followed the Covenant Language Cited Above. The Covenant language seems clear that only one vote is allowed on Association matters. That guidance changed once our bylaws were written. However, prior to the adoption of Bylaws I was informed the Board would allow an owner owning multiple properties one vote for each property owned. If in fact that did occur, it may have been done in violation of the language and intent of our Covenants.  
Is the above summary accurate with respect to cumulative and non-cumulative voting protocol, or is it ambiguous?*
- 5) *Did the Board contravene the voting intent in our Covenants by allowing multiple votes to be cast by a property owner ow[n]ing multiple Lots prior to the creation of bylaw allowing that practice?*
- 6) *Should our [Harborside Subdivision Homeowner Association, Inc.'s] Board be following the definitions and voting guidance specified in Sections 33-31-720, -721,-723, and -725 of the S.C. Nonprofit Corporation Act?"*

**Answers:**

Before this Office attempts to answer your constituent's questions, let us clarify, as you acknowledged in your letter, this Office gives legal opinions and is not authorized to investigate factual disputes in such opinions.

- 1) This Office does not answer factual questions, so this Office will not address the facts as presented. This Office only issues legal opinions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)). This Office cannot serve as legal counsel or give advice to private nonprofit corporations. Our investigations pursuant to S.C. Code Section 33-31-171 are for violations of a nonprofit's charter or other laws of this State. It appears what you are asking for in this question is an investigation and therefore will be forwarded to the civil section of this Office for review.
- 2) Please see Answer 1.
- 3) This question is really asking for legal advice, which we recommend hiring a private attorney.
- 4) Again, this question is ultimately asking for legal advice for a private nonprofit corporation. However, we will forward your question concerning violation of your Covenants to the civil section of this Office.
- 5) As stated above, this question is ultimately asking for legal advice for a private nonprofit corporation. However, we will forward your question concerning violations of your Covenants to the civil section of this Office.
- 6) The simple answer to your question is yes, nonprofit corporations have to follow the law. However, as you may have already noted, S.C. Code Section 33-31-721 (a) says "[u]nless the articles or bylaws provide otherwise..." The same is said in S.C. Code Sections 33-31-722 (a) and -723 (a). Therefore, whether or not your nonprofit corporation has specified otherwise in its

articles or bylaws will determine what parts of the definitions and voting guidance are used. Examination of your nonprofit corporation's articles and bylaws would only be proper as a part of an investigation pursuant to S.C. Code Section 33-31-171 or else by your private counsel. As this Office stated in a prior opinion:

This Office agrees with the statement ... the 'HOA [Homeowner's Association] should be under all the laws, rules and regulations that [the state of South Carolina] and the federal government already have in place.' Neither management companies nor HOAs may act contrary to the laws of this state; such entities must operate within the boundaries set forth in our Code of Law and remain bound to any contractual obligations created. However, the determination as to whether [the management] violated any code of law is factual in nature and thus, beyond the scope of this opinion and better addressed by a court.

Op. S.C. Atty. Gen., 2010 WL 2678696 (June 2, 2010) (citing Ops. S.C. Atty. Gen., 2006 WL 2849809 (September 14, 2006); 2006 WL 2382449 (July 19, 2006); 2006 WL 1207270 (April 6, 2006)). The June 2, 2010 opinion from this Office gives a good overview of homeowner associations under South Carolina law. We are enclosing a copy for your constituent.

**Conclusion:** Based on your questions, this Office will be forwarding your concerns to the civil section of this Office for review. For any other issues, we recommend your constituent consult a private attorney. However, please let us know if we can do anything else to assist you in the future.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General