

ALAN WILSON
ATTORNEY GENERAL



9255/9805

July 24, 2014

The Honorable John L. Scott, Jr.
Senator, District No. 19
P.O. Box 142
Columbia, SC 29202

Dear Senator Scott,

We are in receipt of your letter dated July 14, 2014 requesting the opinion of this Office as to "the proper procedures for appointing members to the Board of Voter Registration and Elections of Richland County" which, as you explain, was created as part of Act 196 of 2014. Specifically, you ask us to advise you regarding "both the timeline and procedures for appointing members to the new board" and further ask us to address "how long . . . the incumbent members of the Board of Elections and Voter Registration of Richland County may continue serving in the 'combined governing capacity' described in SECTION 3 of Act 196 of 2014." Our responses to these questions follow.

I. Law/Analysis

A. The Timelines and Procedures for Appointing Members to the Board of Voter Registration and Elections

Your first question, regarding the timeline for appointing members to the new board, is squarely addressed by Section 7-5-10(B)(1) of the Code as amended by Section Three of Act 196 of 2014. See Act No. 196 § 3, 2014 S.C. Acts, 120th Gen. Sess. (amending S.C. Code Ann. § 7-5-10 to address *inter alia* the timeline for initial appointments to the newly-created Board of Voter Registration and Elections). Specifically, Section 7-5-10(B)(1), as amended, explains "[t]he Governor shall appoint the initial appointees *within six months of the effective date of this section.*" S.C. Code Ann. § 7-5-10(B)(1) (as amended by Act No. 196 § 3 of 2014) (emphasis added). Thus, because Section 11 of Act 196 explains the Act "takes effect upon approval by the Governor" and the Governor signed Act 196 on June 2, 2014, it is the opinion of this Office that "the timeline" for appointing initial appointees to the newly-created Board of Voter Registration and Elections is according to the statute, six months from June 2, 2014 meaning the six month appointment period ends on December 2, 2014.

As mentioned above, the newly-amended version of Section 7-5-10 also addresses the procedures to be utilized in making appointments to the Board of Voter Registration and

The Honorable John L. Scott, Jr.
Page 2
July 24, 2014

Elections. In particular, Section 7-5-10(A)(1), as amended, states the Governor “shall appoint, upon the recommendation of the legislative delegation of the counties, competent and discreet persons in each county, who are qualified electors of that county.” S.C. Code § 7-5-10(A)(1) (as amended by Act No. 196 § 3 of 2014). The amended version of Section 7-5-10(A)(1) goes on to explain “the total number of members of the board must not be less than five nor more than nine persons” with at least one appointee being “a member of the majority political party represented in the General Assembly and at least one appointee . . . be[ing] a member of the largest minority political party represented in the General Assembly.” *Id.* Continuing, amended Section 7-5-10(A)(2) requires board members, following their appointment, to take an oath of office,¹ while the amended version of Section 7-5-10(A)(3) adds “[t]he oath must be filed immediately in the office of the clerk of court of common pleas of the county in which commissioners are appointed” unless there is no clerk of court in which case the oath should be filed “in the office of the Secretary of State.” The statute then explains “[t]he Governor shall notify the State Election Commission in writing of the appointments.” S.C. Code Ann. § 7-5-10(A)(4) (as amended by Act No. 196 § 3 of 2014).

We believe these provisions answer your question as to the procedures for appointing members to the Board of Voter Registration and Elections. Specifically, we believe the procedural requirements can be summarized as mandating the Governor, with the recommendation of the appropriate county legislative delegation, appoint between five and nine qualified electors, with at least the minimum number of appointees from the political parties mentioned in Section 7-5-10(A)(1). We further believe the Governor, who we have explained has six months in which to make initial appointments under Section 7-5-10(B)(1), must then, pursuant to the terms of amended Section 7-5-10(A)(4), notify the State Election Commission of such appointments in writing. Finally, the appointees, in order to be qualified to serve on the Board of Voter Registration and Election, must take an oath to be filed in the appropriate county clerk of court as explained in the newly amended Sections 7-5-10(A)(2) and 7-5-10(A)(3) of the Code.

B. The Length Incumbent Members may Continue Serving in the Combined Governing Capacity Described in Section Three of Act 196 of 2014

Your second question asks “how long . . . incumbent members of the Board of Elections and Voter Registration of Richland County may continue serving in the ‘combined governing capacity’” mentioned in Section Three of Act 196. This question, like your first question, is largely answered by the newly amended Section 7-5-10 of the Code.

¹ Section 7-5-10(A)(2) as amended contains the oath of office to be taken by the board members stating as follows:

I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God.

The Honorable John L. Scott, Jr.
Page 3
July 24, 2014

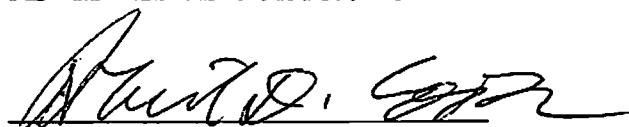
Section 7-5-10(C), as amended by Act Three of Act 196 of 2014, abolishes the previous offices of county election commissions, voter registration boards and combined boards. See S.C. Code Ann. § 7-5-10(C) (as amended by Act No. 196 § 3 of 2014) (“The previous offices of county election commissions, voter registration boards, or combined boards are abolished.”). Continuing, Section 7-5-10(C) explains the powers of such boards “are devolved upon the board of voter registration and elections for each county created in subsection (A).” Id. Additionally, the amended 7-5-10(C) explicitly addresses your question regarding incumbents of these boards stating, “members currently serving on the county election commissions, voter registration boards, or combined boards shall continue to serve in a combined governing capacity *until at least five members of the successor board members established under this section are appointed and qualify.* Id. (emphasis added). Thus, the answer to your second question is that incumbent members of county election commissions, voter registration boards, or combined boards serve “until at least five members” of the newly created Board of Voter Registration and Elections are “appointed and qualify” as explained in Section 7-5-10(C).²

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

² As we have explained in previous opinions, an individual qualifies for an office by taking the oath of office. See Op. S.C. Atty. Gen., 2014 WL 2591469 (May 14, 2014) (reiterating that a successor is qualified by taking the oath of office); Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (stating an individual qualifies for office by taking the oath of office); Op. S.C. Atty. Gen., 1984 WL 249998 (October 25, 1984) (advising that an individual had not yet qualified for an office due to the fact he had not taken the oath of office); Op. S.C. Atty. Gen., 1983 WL 181927 (July 1, 1983) (explaining the taking of the oath of office is the event which qualifies that an individual is fit for office) (quoting 67 C.J.S. Officers, § 18); Op. S.C. Atty. Gen., 1982 WL 189502 (December 10, 1982) (indicating the oath of office must be performed in order for an individual to qualify for office); Op. S.C. Atty. Gen., 1980 WL 120573 (June 30, 1980) (concluding that a successor in office is “appointed and qualified” when the successor who is appointed takes the oath of office); Op. S.C. Atty. Gen., 1976 WL 22863 (February 5, 1976) (holding a master in equity would not qualify for the office until executing the oath of office).