



ALAN WILSON
ATTORNEY GENERAL

August 25, 2014

Mr. Jeff M. Anderson
Attorney for the County of Lexington
140 East Main Street
Lexington, South Carolina 29071

Dear Mr. Anderson:

We received your email dated August 22, 2014. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue:

On August 14, 2014, the Town of Chapin's Mayor sent a letter to the Lexington County Registration and Election Commission, stating "[t]he Town of Chapin, South Carolina submits the ballot question" about a proposed change of the form of government to be placed on the November 4, 2014 general election ballot. The Mayor's letter did not courtesy copy anyone, did not make reference to a town council meeting or vote, and did not include any attachments related to the Town of Chapin ("Town") governing body's vote or decision.

On August 20, 2014, the Town's Mayor sent a letter to the Lexington County Registration and Election Commission, stating that he objected to the Special Election being set for September 30, 2014, outlining his objections, and "strongly suggest[ing] that the commission establish November 4, 2014 General Election [sic] as the date to have the Chapin referendum on the ballot." The letter courtesy copied the Town's councilmembers and the Lexington County Council Chairman.

On August 21, 2014, Attorney Spencer Syrett, the attorney for some members of the Town's Council, sent a letter to the Lexington County Registration and Election Commission, stating a town council meeting that was set to be held at the beginning of the month had been rescheduled by the Mayor to the end of the month; explaining no "regular, special or emergency meeting" had been held by the Town's Council since July 1, 2014^[1]; and stating the Town's

[1] As discussed in this Office's August 14, 2014 Opinion, on August 7, 2014, the governing body for the Town of Chapin received a certified petition, executed by at least 15% of the qualified electors of the Town, for the purpose of having a special election to determine the form of government within the Town.

Council had not taken any action in this matter without meeting or discussing the issues, as is required by the Freedom of Information Act.

In a separate letter dated August 21, 2014, and addressed to the Lexington County Registration and Election Commission, Attorney Syrett responded to the Mayor's August 20, 2014 letter, stating, in part, that the Mayor did not speak on behalf of the Council.

In response to these two "irreconcilable pieces of information," the County Registration and Election Commission (hereafter "the Election Commission") asks this Office's opinion on whether the Election Commission should:

- a) proceed with placing the form of government referendum question on the November 4, 2014 general election ballot as was requested by the Mayor in his August 14, 2014 letter, or
- b) refuse to place the question on the November 4, 2014 general election ballot because it has knowledge that the Town's governing body did not request that date as its election date.

Law/Analysis:

South Carolina Code Ann. Section 5-5-20 states "the municipal governing body shall conduct a special election . . ." (emphasis added). And, as discussed in this Office's August 14, 2014 Opinion to you, despite the Town of Chapin delegating the conducting of the election to the County of Lexington, the Town's governing body still decides the date the election will be held. As such, it is the Town's governing body that will and must set the date for this election.

Title 5 does not define the term "governing body." "When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning." *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 337 (Ct. App. 2003) (citing *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 446 S.E.2d 404 (1994); *State v. Hudson*, 336 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999)). "The legislature is presumed to have fully understood the meaning of the words it used in a statute, and unless this meaning is vague or indefinite, we presume that it intended to use them in their ordinary and common meaning or in their well[-]defined legal sense." *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 569, 556 S.E.2d 726, 731 (Ct. App. 2001) (emphasis in original). Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Georgia-Carolina Bail Bonds*, 354 S.C. at 24, 579 S.E.2d at 337 (citing *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (S.C. 1997); *State v. Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002)).

Our courts have interpreted the usual and customary meaning of "governing body" to mean a government's council. In *State v. Boswell*, the South Carolina Supreme Court analyzed S.C. Code Ann. Section 23-20-50, the statute governing multi-jurisdictional agreements, and held the statute's requirement that the "agreement may be ratified by the governing body of

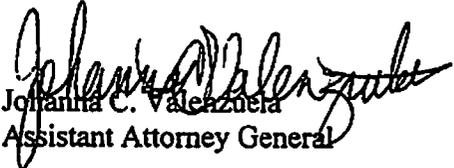
each jurisdiction” meant it was not sufficient that the “agreement had been ‘sent to’ but not voted on by the county council.” *State v. Boswell*, 391 S.C. 592, 603, 707 S.E.2d 265, 270 (S.C. 2011) (quoting S.C. Code Ann. § 23-20-50) (emphasis added). Because of the governing body’s failure to satisfy the statutory provisions, the court found the agreement invalid.

As with the Court in *Boswell*, we are of the opinion that pursuant to its usual and customary meaning, governing body means town council and further believe any election held without the town council’s lawful instruction could be found invalid.

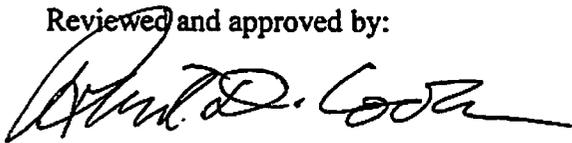
Conclusion:

Based upon the facts and law as set out above, the Mayor, through his August 14, 2014 letter to the Election Commission, did not speak on behalf and at the lawful direction of the Town’s Council; therefore, the Election Commission should not place the referendum question at issue on the November 4, 2014 general election ballot.

A special election regarding the form of government for the Town of Chapin must be held no earlier than thirty days and no later than ninety days from August 7, 2014, and the Town’s governing body must select the date.


Johanna C. Valenzuela
Assistant Attorney General

Reviewed and approved by:



Robert D. Cook
Solicitor General