



ALAN WILSON  
ATTORNEY GENERAL

February 1, 2017

The Honorable John L. Scott, Jr.  
Member  
South Carolina Senate, District No. 19  
P.O. Box 142  
Columbia, SC 29202

Dear Senator Scott:

Attorney General Alan Wilson has referred your letter to the Opinions section regarding residency requirements for commissioners of the Richland County Recreation Commission ("Commission") and whether there are residency restrictions on the Richland County Legislative Delegation members who may recommend individuals to the Governor for appointment to the Commission. Your letter provides the following:

By way of background, the Richland County Creation Commission ("Commission") was established pursuant to Act 873 of 1960, which the General Assembly has amended on several occasions. Section 2 of Act 873 of 1960 provides, "the [recreation] district shall include and be comprised of the entire territory of Richland County not embraced within the city limits of Columbia." Section 4 of Act 873 of 1960 states, "the district shall be governed by a commission... which shall be composed of five resident electors of the district to be appointed by the Governor upon the recommendation of the Richland County Legislative Delegation, including the Senator." This language was amended in 1967 (Act 306) and again by Act 581 of 1976 to read, "the district shall be governed by a commission... which shall be composed of seven resident electors of the district to be appointed by the Governor upon the recommendation of a majority of the members of the Richland County Legislative Delegation."

Your letter requests this Office's opinion regarding the following questions:

- (1) May the Richland County Legislative Delegation recommend to the Governor for appointment a person who resides within the city limits of Columbia; and
- (2) May those members of the Richland County Legislative Delegation who reside within the city limits of Columbia participate in the decision making process to recommend an individual to the Governor for appointment to the Commission?

#### Law/Analysis

It is this Office's opinion that a person who resides within the city limits of Columbia is not eligible to be a member of the Richland County Recreation Commission, and that members of the Richland County Legislative Delegation who reside within the city limits of Columbia are authorized to

participate in the decision making process to recommend an individual to the Governor for appointment to the Commission.

We turn to the rules of statutory construction to guide our analysis of the legislation relevant to the Commission membership and recommendations for appointment thereto. The primary rule of statutory construction requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where the statutes' language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh'g denied (Aug. 5, 2015). With these principles in mind, we turn to the General Assembly's enactments establishing the Commission.

As your letter states, the Commission was created by 1960 Act No. 873. The act established the Rural Recreation District of Richland County ("District"). 1960 Act No. 873, § 1. The District was defined to encompass "the entire territory of Richland County not embraced within the city limits of Columbia." Id. at § 2. The act further established the Rural Recreation Commission of Richland County, as the Commission was originally named, to govern the District. Id. at § 4. The act mandated that the commission "shall be composed of five resident electors of the district to be appointed by the Governor upon the recommendation of the Richland County Legislative Delegation, including the Senator. In making such recommendations the Richland County Legislative Delegation shall endeavor to give representation on the commission to all sections of the district." Id. Therefore, this Office interprets the plain and unambiguous language of Section 2 and Section 4 to mean that the commission member residency requirement excludes all persons living outside of the boundaries of Richland County, as well as those persons living within the limits of the City of Columbia.<sup>1</sup>

The General Assembly enacted subsequent legislation which amended the amount of commissioners and the legislative recommendation requirements. In 1967, the General Assembly amended the Commission's composition to include two additional members, bringing the total number of commissioners to seven. 1967 Act No. 306, § 1. The 1967 amendment still required the seven commissioners to be "resident electors of the district," but the description of the legislative recommendation was changed to read as "a majority of the members of the House of Representatives and a majority of the members of the Senate representing Richland County." Id. In 1969, the General Assembly amended the "names of the Rural Recreation District and the Rural Recreation Commission of Richland County... to the Recreation District and the Recreation Commission of Richland County." 1969

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<sup>1</sup> The South Carolina Supreme Court has interpreted S.C. Constitution, Article XVII, § 1 to imply a residency requirement within the area an officer will represent even when one is not specified by the General Assembly. McLure v. McElroy, 211 S.C. 106, 120, 44 S.E.2d 101, 108 (1947), overruled on other grounds by Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997); See also Op. S.C. Atty. Gen., 2007 WL 1651338 (May 21, 2007) (discussing application of McLure to local planning commissioners residency requirement).

Act No. 317, § 1. While 1969 Act No. 317 changed the names of the District and the Commission, it did not alter the area that the District encompasses or the residency requirement for commissioners. In 1976, the General Assembly again amended the legislative recommendation requirement to read as “a majority of the members of the Richland County Legislative Delegation.” 1976 Act No. 581, § 1.<sup>2</sup> This act, just as the prior acts cited above, did not alter the area that the District encompasses nor did it alter the residency requirement for commissioners.

Unlike the acts discussed above, in 2005, the General Assembly enacted legislation which withdrew the recommendation authority from the legislative delegation. In pertinent part, the act is titled “AN ACT TO DEVOLVE THE AUTHORITY TO APPOINT THE MEMBERS OF THE RICHLAND COUNTY RECREATION COMMISSION FROM THE RICHLAND COUNTY LEGISLATIVE DELEGATION TO THE GOVERNING BODY OF RICHLAND COUNTY...” 2005 Act No. 207. However, in Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007), the South Carolina Supreme Court ruled that the 2005 act was unconstitutional special legislation in violation of S.C. Constitution, Article VIII.<sup>3</sup> It is, therefore, this Office’s opinion that the residency requirement for a member of the Commission and the legislative recommendation are controlled by 1976 Act No. 581. See Bergstrom v. Palmetto Health All., 358 S.C. 388, 399, 596 S.E.2d 42, 47 (2004) (the general rule that statutes which are ruled to be unconstitutional are considered void from the date of enactment “except in special or unusual circumstances, such as when doing so would create widespread havoc involving a great number of people or transactions, spawn unnecessary litigation, or result in flagrant injustice.”). While 1976 Act No. 581 contains a residency requirement for commissioners, there is no parallel residency requirement for the Legislative Delegation members who are tasked with recommending persons for appointment to the Governor. Accordingly, it is this Office’s opinion that a court is likely to find the members of the Richland County Legislative Delegation who reside within the city limits of Columbia are authorized to participate in the decision making process to recommend an individual to the Governor for appointment to the Commission.

### **Conclusion**

We hope that the guidance provided above will assist you and the Richland County Legislative Delegation in the decision making process to recommend appointees to the Governor for commissioners on the Richland County Recreation Commission. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for

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<sup>2</sup> While the act is not codified in the Code of Laws of South Carolina 1976, it is this Office’s opinion that the statute remains effective despite its omission. Op. S.C. Atty. Gen., 1979 WL 43077, at \*2 (June 22, 1979) (“The general rule in South Carolina is that omission of a general statute upon adoption of the Code repeals the statute. However, in City of Florence v. Turbeville, 239 S.C. 126, 121 S.E.2d 437 (1961), the Supreme Court noted that the State Code of Laws can contain only the general statute laws of the State. Purely local laws are not part of the Code and their omission from the Code does not, therefore, repeal them.”).

<sup>3</sup>This Office declines to comment at this time on the constitutionality of the legislative enactments which have not been otherwise addressed by our State Courts.

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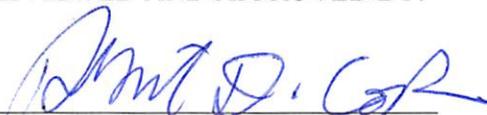
a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General