

1976 S.C. Op. Atty. Gen. 270 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4418, 1976 WL 23035

Office of the Attorney General

State of South Carolina

Opinion No. 4418

August 9, 1976

*1 Dr. William C. Draffin

Chairman

Board of Trustees

The Medical University of South Carolina

1226 Pickens Street

Columbia, South Carolina 29201

Dear Dr. Draffin:

We have been asked to advise you whether, in our opinion, a member of the Board of Trustees of the Medical University of South Carolina (Board) can participate in the election of the Chairman of the Board by an absentee ballot.

Although the Chairman of the Board is to be elected biennially * 'by a majority vote of the Trustees taken by written ballot' [see, Charter and By-Laws of The Medical University of South Carolina Chapter II § 3(b) at 2 (August, 1976); cf., S. C. Code Annot., § 22-355, as amended], nonetheless, it is our opinion that a member's physical presence is required in order to validate his participation in the election of a Chairman, absent a statute to the contrary. Cf., 19 AM.JUR.2d Corporations § 1131 at 565; 19 C.J.S. Corporations § 750 at 96; Opinion No. 2367, 1967 OP.ATTY.GEN. 212. As stated in the last cited authority, '[a]s a general rule, 'except where a special provision exists, a voter must always cast his vote in person'' See also, THROOP ON PUBLIC OFFICERS § 141 at 144. Moreover, the right to cast an absentee ballot exists only when that right has been conferred by law. Cf., C.J.S. Elections § 243 at 70. Here, there is no statute or other law that would permit a member of the Board of Trustees of the Medical University to vote for the election of the Chairman by absentee ballot. The written ballot which a member is authorized by the University's by-laws to make is, then, a written ballot that is to be cast by the member in person. It is not one which may be submitted by an absent member.

Kind regards,

C. Tolbert Goolsby, Jr.

Footnotes

* The by-laws specify that the election of the Chairman shall be done '[b]i-annually at its August meeting'; however, we interpret that wording no mean 'biennial', that is, every two years.

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