ALAN WILSON
ATTORNEY GENERAL

October 11, 2017

The Honorable Shane Martin, Member
South Carolina Senate
PO Box 142
Columbia, South Carolina 29202

Dear Senator Martin:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

> I have been asked for clarity on a School Board issue and am requesting an opinion of South Carolina Law § 59-25-10, which states "No person who is a member of the board of trustees or a member of the immediate family (parents, children, brothers or sister) of a member of the board of trustees of any school district shall be employed by the board as a teacher without the written approval of the board of trustees of the district…"
>
> Specifically, I am requesting an interpretation of the process or format for the "written approval of the board of trustees of the district…"

**Law/Analysis**

In researching this opinion request, we have been unable to locate prior opinions issued by this Office or by our state courts regarding the process or format of the "written approval of the board of trustees of the district" described in S.C. Code Ann. § 59-25-10. Therefore, to determine what form is required for the written approval, we must turn to the rules of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws 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 a statute's 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). However, in this instance the text of S.C. Code Ann. § 59-29-10 provides no description of the format or process that a school district board of trustees should follow.

In an analogous June 28, 2016 opinion, this Office opined that where the General Assembly left undefined what format was required for the adoption and passage of municipal

ordinances except that they be in "writing and in the form required for final adoption," the municipal governing bodies were given discretion to establish such form requirements. See Op. S.C. Atty. Gen., 2016 WL 3946155 (June 28, 2016) ("[I]t is this Office's opinion that the Legislature did not intend to establish form requirements for proposed municipal ordinances in the South Carolina Code of Laws, but rather left the establishment of such requirements to the discretion of municipal governing bodies."). Like this state's municipal corporations, school district boards of trustees are bodies politic and corporate. See S.C. Code Ann. § 59-17-10; Carter v. Lake City Baseball Club, 218 S.C. 255, 262, 62 S.E.2d 470, 473 (1950) ("[A] school district is a body politic and corporate under the laws of the state, with limited powers confined generally to those expressly enumerated and those necessary implied."). As the General Assembly similarly did not specify what format is required for the "written approval" described in S.C. Code Ann. § 59-25-10, it is this Office's opinion that a court would find that a school district board of trustees has discretion to establish such format requirements.

This Office's September 6, 1984 opinion is instructive as to the process a school district board of trustees should follow when considering whether to grant the written approval required by S.C. Code Ann. § 59-25-10. Op. S.C. Atty. Gen., No. 84-111, 1984 WL 159918 (September 6, 1984). This Office opined that a public body may only take action when the body is convened in a formal session. The opinion stated the following:

> The powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts and specifically acts involving discretion and judgment, particularly acts in a judicial and quasi-judicial capacity, are official only when done by the members formally convened in session, upon a concurrence of at least a majority, and with the presence of a quorum of the number designated by statute.

2 Am.Jur.2d, Administrative Law, § 288. These basic principles are recognized by several similar treatises in the context of action by a variety of other public officers and bodies. See, 73 C.J.S., Public Administrative Law and Procedure, § 18; 68 Am.Jur.2d, Schools, § 46; 67A C.J.S., Parliamentary Law, § 5.

...

Our own Supreme Court, if its language in particular cases is any indication, appears to accept this rule also. In Gaskin v. Jones, 198 S.C. 509, 18 S.E.2d 454 (1942), for example, the Court stated:

> In the absence of any statutory or other controlling provision, the common law rule to the effect that a majority of a whole body is necessary to constitute a quorum applies, and no valid act can be done in the absence of a quorum. A majority of such a body must

> be present to constitute a Board competent to transact business. (Emphasis added.).

198 S.C. at 513. In addition, the Court in Abbeville v. McMillan, 52 S.C. 60, 72 (1897), quoted with approval language used by the United States Supreme Court in Cooley v. O'Connor, 12 Wall. 391 at 398 (1871):

> It is true that when an authority is given jointly to several persons, they must generally act jointly or their acts are invalid. This is a general rule for private agencies, though it is not universal in its application. But the rule is otherwise when the authority is of a public nature, as it was in this case. The commissioners were public agents, clothed with public authority. They were created to perform a governmental function, and it is a familiar principle that an authority given to several for public purposes may be executed by a majority of their number.

Id. For the reasons discussed above, it is this Office's opinion that a court would likely find the process whereby a school district board of trustees approves of the hiring of a teacher otherwise barred from employment with the district by S.C. Code Ann. §59-25-10 must be accomplished by at least a majority vote and with the presence of a quorum.

Further, the vote taken by such a school district board of trustees must comply with the South Carolina Freedom of Information Act requirement that it be in taken in public session. See S.C. Code Ann. §§ 30-4-20 ("'Public body' means any... state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts..."); 30-4-60 ("Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter."); 30-4-70(a)(1) ("A public body may hold a meeting closed to the public" for the reason of discussing employment); 30-4-70(b) ("No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session."); see also New York Times Co. v. Spartanburg Cty. Sch. Dist. No. 7, 374 S.C. 307, 649 S.E.2d 28 (2007) (affirming that the failure to provide documents regarding the school district board of trustees' evaluation of candidates for superintendent violated the S.C. FOIA).

## Conclusion

It is this Office's opinion that a court would find that a school district board of trustees has discretion to establish what format is required for the "written approval" described in S.C. Code Ann. § 59-25-10 because the General Assembly did not specify what format is required. Further, it is this Office's opinion that a court would likely find that if a school district board of

trustees approves of the hiring of a teacher otherwise barred from employment with the district by S.C. Code Ann. § 59-25-10, the approval must be accomplished by at least a majority vote, with the presence of a quorum, in a meeting which is open to the public. 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 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