



ALAN WILSON  
ATTORNEY GENERAL

July 10, 2018

Mr. Willie Horton McAbee, III  
6925 Liberty Hwy  
Pendleton, SC 29670-9313

Dear Mr. McAbee:

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

I am currently an elected member of the Three & Twenty Creek Watershed District which is situated in both Anderson and Pickens Counties. I have recently accepted a new job which imposes certain ethical conditions, one of which is that I not hold any elected political office during my employment. Therefore, I will be forced to submit my resignation from the watershed district. However, after speaking with the administrative head of the Anderson County Soil and Water Conservation Commission (Commission) I was informed that after resignation the unexpired balance of my term in office would be filled by appointment instead of a special election. I am concerned that this would not be appropriate and that a special election may be required. After reviewing the applicable provisions of the South Carolina Code I believe that the commission is basing its theory on S.C. Code Ann. § 48-11-100(C)(8) which provides:

"(8) When each phase of a work of improvement of a watershed conservation district for which directors are appointed does not have a sponsor with authority to levy an annual tax on real property in the district for that phase of the work of improvement, or when the watershed conservation district does not have sufficient funds to pay the expenses of the district, the procedure for selecting watershed conservation district directors must be changed from appointment to election, and the board of commissioners shall notify in writing the county election commission, county auditor, sponsors of works of improvement of the watershed conservation district, watershed conservation district directors, and the department that the selection procedure is changed when current terms expire and that when current terms expire and have been filled by election, the watershed conservation

district board may levy an annual tax on real property in the district as long as directors are elected instead of appointed. For a vacancy occurring before the expiration of the term of an elected director, a successor to serve for the unexpired portion of the term must be appointed by the board of commissioners." (emphasis added).

This provision by its terms seems to apply to a situation where a watershed district whose members are selected appointment are forced to change to election in order to levy a tax on real property in order to pay expenses. It is of course a mandate of the S.C. Constitution that no taxes be levied by non-elected bodies unless the tax be approved by an elected body. See S.C. Const. art. X, § 5. In contrast to § 48-1 1-1 00(C)(8), S.C. Code Ann. § 7-13-190 mandates that where there is a vacancy in the office due to death, resignation, or removal that unless specifically exempted the office is to be filled by special election. I am concerned that § 48-1 1-1 00(C)(8) only controls in the highly context to which it relates, and that otherwise the general provisions of § 7-13-190 control. I am unable to find any other provisions that mandate that the expired terms of a watershed director be filled by appointment. Therefore, I have a question[] for your office:

"Does South Carolina law require that the unexpired term of an elected watershed director be filled by appointment or must it be filled by a special election."

#### Law/Analysis

This Office understands that the question specifically concerns the procedure for replacing elected directors of watershed conservation districts. Watershed conservation districts are governed by five directors. S.C. Code Ann. § 48-11-100(A). The initial directors of a watershed conservation district are required to be elected. S.C. Code Ann. § 48-11-100(B). The directors govern the watershed conservation district "under the general supervision of the board of commissioners of the soil and water conservation district." *Id.* Subsection 48-11-100(C)(2) allows for subsequent directors to be appointed, rather than elected, if one of the sponsors has the authority to levy an annual tax on real property in the district or if the district has sufficient funds other than levying taxes to pay the expenses of the district. Subsection 48-11-100(C)(8), quoted in the request letter above, applies when the two conditions in (C)(2) are no longer present. In such a case, the directors of the watershed conservation district must revert to succession by election and the district can then again levy taxes on real property in the district. *Id.* The final sentence of subsection (C)(8) states that the term of an elected director who vacates his office is to be filled by "a successor ... appointed by the board of commissioners." Subsection 48-11-100 (D) provides that the term of an appointed director who vacates his office is to be filled by "appointment by the body that made the original appointment." By the statute's plain language, if a director, whether elected or appointed, vacates his seat on the governing body of a watershed

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conservation district prior to the expiration of his term, his seat is filled by appointment. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (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.").

The request letter suggests that S.C. Code Ann. § 7-13-190 mandates a special election be held to fill a vacated director's seat on the governing board of a watershed conservation district. However, the plain language of the statute states, "Except as otherwise provided in this code as to specific offices, whenever a vacancy occurs in office by reason of death, resignation, or removal and the vacancy in office is one which is filled by a special election to complete the term of office, this section applies." S.C. Code Ann. § 7-13-190(A) (emphasis added). As discussed above, S.C. Code Ann. § 48-11-100 provides the office of a director of the governing body of a watershed conservation district is filled by appointment whenever a vacancy in such an office occurs. Therefore, it is this Office's opinion that a court would likely find such a director holds one of the specific offices which are exempt from being filled by a special election to complete the term of office. See Op. S.C. Atty. Gen., 1982 WL 189502 (December 10, 1982) ("A successor clearly may be appointed by the Land Resources Conservation Commission upon recommendation by the remaining commissioners to fill the unexpired portion of the present term of the re-elected incumbent commissioner who wishes to resign.")

### Conclusion

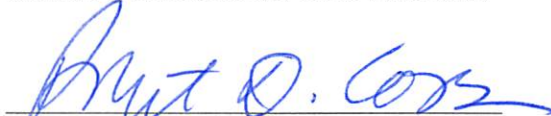
It is this Office's opinion that a court would likely find a director on the governing body of a watershed conservation district holds one of the specific offices which are exempt from being filled by a special election to complete the term of office. S.C. Code Ann. § 7-13-190. By the plain language of S.C. Code Ann. § 48-11-100(C)(8)&(D), if a director, whether elected or appointed, vacates his seat on the governing body of a watershed conservation district prior to the expiration of his term, his seat is filled by appointment.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General