



ALAN WILSON  
ATTORNEY GENERAL

July 15, 2019

Mr. Andrew C. Marine  
Vice-Chairman  
Aiken County Registration and Elections Commission  
1930 University Parkway, Ste. 1200  
Aiken, SC 29801

Dear Mr. Marine:

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

The Aiken County Registration and Elections Commission requests an opinion regarding statutory interpretation of the word "meeting" in §7-5-10(B)(3) of the South Carolina Code of Laws.

The relevant statute states, "If a member misses three consecutive meetings of the board, the chairman or his designee immediately shall notify the Governor who shall then remove the member from office."

The term "meeting" is not defined. We understand that a duly notified "meeting" complying with the state Freedom of Information Act (FOIA) criteria would be considered a "meeting" (Agenda posted and notice given). However, the election commission not only has regular monthly or bimonthly meetings which comply with FOIA, but we have other types of activities.

For instance, on election day, the individual commissioners are actively involved in receiving, tallying and processing votes at the election headquarters. We are making group decisions regarding preliminary tallies and counting absentee votes.

Generally three days after the election, we meet to hear election protests and certifications. The statute requires that an election protest be heard within a certain time period (days) after the certification of the election. Are all those activities, considered "meetings?"

If those activities are considered "meetings," and if a member were to be ill and miss a two-week period, must the Governor remove the member from the

Commission? This would be even if they had been involved in all other meetings and activities over the previous year.

This could be an issue because this year (2019) Aiken County has multiple elections for local municipalities<sup>1</sup> and a vacant House seat. The primary and general election dates are all different dates which overlap with each other.

### Law/Analysis

It is this Office's opinion that a court likely would hold a "meeting," as used in S.C. Code Ann. 7-5-10(B)(3), occurs when the members of a county board of voter registration and elections ("Board") convene to discuss or act on a matter over which the Board has supervision, control, or advisory power. As stated in the request letter, Section 7-5-10(B)(3) requires the chairman of the Board to "immediately" notify the Governor when a member misses three consecutive meetings. The statute then states that the Governor "shall" remove such a member from office. *Id.* Because the statute uses the word "shall" to describe the Governor's role in removing a member of a Board, a court likely would hold such removal is mandatory. Johnston v. S.C. Dept of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 293, 296-97, 617 S.E.2d 363, 364 (2005) ("The term 'shall' in a statute means that the action is mandatory."). However, because "meeting" is not defined within Title 7, Chapter 5, Article 1, which governs such a Board, the request letter asks for this Office's opinion on which of its activities are considered meetings.

This Office has not identified a case in which our state courts interpreted "meeting" in Section 7-5-10(B)(3). When a term in a statute is undefined, the rules of statutory construction indicate that a word should be interpreted according to "its usual and customary meaning." Perry v. Bullock, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014). Black's Law Dictionary defines meeting as "[a] single official gathering of people to discuss or act on matters in which they have a common interest; esp., the convening of a deliberative assembly to transact business." MEETING, Black's Law Dictionary (11th ed. 2019); see also Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/meeting> ("act or process of coming together"). Additionally, the S.C. Freedom of Information Act ("S.C. FOIA") includes a definition for "meeting" which may be useful for comparison. The S.C. FOIA defines meeting as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code Ann. § 30-4-20(d). In Lambries v. Saluda Cty. Council, 409 S.C. 1, 14, 760 S.E.2d 785, 792 (2014), the South Carolina Supreme Court interpreted this definition to include more than "instances where action is taken." The Court cited the following explanation:

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<sup>1</sup> Municipal elections are governed in a separate title of the South Carolina Code of Laws. See S.C. Code Ann. §§ 5-15-10 to -170; see also Op. S.C. Att'y Gen., 2007 WL 419434 (January 29, 2007) (discussion of appointment and removal authority regarding municipal election commission members).

Under an open meetings law, a meeting is a gathering of a quorum or more members of a governing body at which members discuss, decide, or receive information as a group on issues relating to the official business of the body. ... A meeting is not limited to gatherings at which action is taken by a governing body. Deliberative gatherings are included as well, and deliberation in this context connotes not only collective decision-making but also the collective acquisition and exchange of facts in preparation for the final decision.

409 S.C. at 14–15, 760 S.E.2d at 792 (citing 62 C.J.S. Municipal Corporations § 308 (2011)). When considering the authorities discussed above, it is this Office’s opinion that a court would likely interpret “meeting” in Section 7-5-10(B)(3) to include instances when a majority or quorum<sup>2</sup> of the members of a Board convene to discuss or act on a matter over which the Board has supervision, control, or advisory power.

While such a determination may obligate members of a Board to attend several meetings in quick succession, a member may be permitted to attend these meetings remotely in limited circumstances. Some bodies have adopted procedural rules which allow a member to attend public meetings by using remote conferencing platforms when the member would otherwise be unable to attend in person. This Office has previously opined that “in the absence of a statute requiring it to meet physically in a certain place, [Section 30-4-20(d)] authorizes a public body to meet by means of a telephone conference call so long as the public body complies with the other provisions of the South Carolina Freedom of Information Act.” Op. S.C. Att’y Gen., 2007 WL 1651329, at 2 (May 18, 2007); see also Op. S.C. Att’y Gen., 2012 WL 3875118 (August 28, 2012) (opining a member of a board of public works could attend a meeting via telephone conference). Section 7-5-10(B)(2) could be viewed to require a member’s physical presence as it states, “A member must be present at a meeting in order to vote.” S.C. Code Ann. § 7-5-10(B)(2). However, this Office has previously opined that the physical presence of the members of the State Board of Canvassers was required because Sections 7-3-10(c) and 7-17-220 specified “the location at which the Board, or the Commission as the case may be, shall meet.” Op. S.C. Att’y Gen., 2007 WL 1651329, at 2-3 (May 18, 2007). Subsequently, the General Assembly amended Section 7-17-220 to clarify that, while the Board of State Canvassers meets at specified locations, it intended to allow the members to attend remotely if necessary. See 2010 Act No. 205, § 1, eff. June 8, 2010 (amending S.C. Code Ann. 7-17-220 to read in part “Nothing in this section prohibits the meeting from being conducted by using telephone conference or other means of telecommunication or electronic communication.”). Because Section 7-5-10(B)(2) contains even less description regarding the location of meetings than the former Section 7-17-220, a court may well find that the General Assembly did not clearly convey a legislative intent to require members of a county board of voter registration and elections to be

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<sup>2</sup> See S.C. Code Ann. § 7-5-30 (“One member of the board shall constitute a quorum for the purpose of registering or refusing to register applications for registration.”). While a single member of a Board is considered a quorum for registering or refusing to register applications, such a quorum would not constitute a gathering of the members or a majority of the body. Therefore, it is this Office’s opinion that a court likely would not hold such single member quorums constitute meetings under Section 7-5-10(B)(3).

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physically present at a meeting. Therefore, a court may well find that a member of a Board is permitted to attend a meeting by using a remote conferencing platform when the member would otherwise be unable to attend in person.

### Conclusion

It is this Office's opinion that a court likely would hold a "meeting," as used in S.C. Code Ann. 7-5-10(B)(3), occurs when the members of a county board of voter registration and elections ("Board") convene to discuss or act on a matter over which the Board has supervision, control, or advisory power. As stated in the request letter, Section 7-5-10(B)(3) requires the chairman of the Board to "immediately" notify the Governor when a member misses three consecutive meetings. The statute then states that the Governor "shall" remove such a member from office. Id. Because the statute uses the word "shall" to describe the Governor's role in removing a member of a Board, a court likely would hold such removal is mandatory. Johnston v. S.C. Dep't of Labor, Licensing, & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 293, 296-97, 617 S.E.2d 363, 364 (2005) ("The term 'shall' in a statute means that the action is mandatory.").

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General