



ALAN WILSON
ATTORNEY GENERAL

June 15, 2020

The Honorable Jimmy Bales, Member
South Carolina House of Representatives
P.O. Box 11867
Columbia, South Carolina 29211

Dear Representative Bales:

We received your letter requesting an opinion of this Office concerning the Board of Voter Registration and Elections of Richland County. You inquire as to the authorities and responsibilities of the Richland County Legislative Delegation relative to the Board "other than, recommending citizens for appointment." Specifically, you state you would like to know if "RC Legislative Delegation members have any say over the operations of the board members; in relations to hiring, the elections process or other office operations."

Law/Analysis

Article 1 of chapter 5 of title 7 governs county boards of voter registration and elections. Section 7-5-10 of the South Carolina Code (2019) pertains to the appointment of member to county boards, abolishes previous boards, and sets forth training and certification requirements.

(A)(1) The Governor shall appoint, upon the recommendation of the legislative delegation of the counties, competent and discreet persons in each county, who are qualified electors of that county and who must be known as the "Board of Voter Registration and Elections of _____ County". The total number of members on the board must not be less than five nor more than nine persons. At least one appointee on the board shall be a member of the majority political party represented in the General Assembly and at least one appointee shall be a member of the largest minority political party represented in the General Assembly.

(2) After their appointment, the board members must take and subscribe, before any officer authorized to administer oaths, the following oath of office prescribed by Section 26, Article III of the Constitution: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve,

protect and defend the Constitution of this State and of the United States. So help me God.”

(3) The oath must be filed immediately in the office of the clerk of court of common pleas of the county in which the commissioners are appointed, or if there is no clerk of court, in the office of the Secretary of State.

(4) The Governor shall notify the State Election Commission in writing of the appointments. The members appointed are subject to removal by the Governor for incapacity, misconduct, or neglect of duty.

(B)(1) The Governor shall appoint the initial appointees within six months of the effective date of this section. Four of the initial appointees shall serve two-year terms, and the remaining initial appointees shall serve four-year terms. Upon expiration of the terms of those members initially appointed, the term of office for the members of the board is four years, and until their successors are appointed and qualify. Members may succeed themselves.

(2) A member must be present at a meeting in order to vote.

(3) 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.

(4) In case of a vacancy on the board, the vacancy must be filled in the same manner as an original appointment, as provided in this section, for the unexpired term.

(5) The board shall elect from among its members a chairman and such other officers as it may consider desirable. The board shall then notify the State Election Commission in writing of the name of the persons elected as chairman and officers of the board. Each officer shall be elected for a term of two years.

(6) The board must hire a director. The director is responsible for hiring and managing the staff. Staff positions are subject to the personnel system policies and procedures by which all county employees are regulated, except that the director serves at the pleasure of the board. A member of the board must not be hired or serve as a member of the staff while serving as a board member.

(7) Members of the board and its staff shall receive compensation as may be appropriated by the governing body of the county.

(C) The previous offices of county election commissions, voter registration boards, or combined boards are abolished. The powers and duties of the county election commissions, voter registration boards, or combined boards are devolved upon the board of voter registration and elections for each county created in subsection (A). Those members currently serving on the county election commissions, voter registration boards, or combined boards shall continue to serve in a combined governing capacity until at least five members of the successor board members established under this section are appointed and qualify.

(D)(1) Each member, and each staff person designated by the board, must complete, within eighteen months after a member's initial appointment or his reappointment following a break in service, or within eighteen months after a staff person's initial employment or reemployment following a break in service, a training and certification program conducted by the State Election Commission. When a member or staff person has successfully completed the training and certification program, the State Election Commission must issue the member or staff person a certification, whether or not the member or staff person applies for the certification.

(2) If a member does not fulfill the training and certification program as provided in this section, the Governor, upon notification, must remove that member from the board unless the Governor grants the member an extension to complete the training and certification program based upon exceptional circumstances.

(3) Following completion of the training and certification program required in item (1), each board member, and each staff person designated by the board or commission, must take at least one training course each year.

S.C. Code Ann. § 7-5-10.

Section 7-5-10(A)(1) gives authority to the Governor to appoint members to county boards. However, this authority is limited in that such appointments must be made based on the recommendation of the appropriate county legislative delegation. S.C. Code Ann. § 7-5-10(A)(1). In prior opinions, we stated "where the Governor is given the statutory authority to appoint, upon recommendation of the county legislative delegation, such authority is deemed ministerial." Op. Att'y Gen., 2018 WL 5096184 (S.C.A.G. Oct. 4, 2018) (citing Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936)). The Supreme Court came to this same conclusion in

Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996), wherein the Court cited to Blalock and found a statute calling for an appointment by the Governor upon recommendation of a county delegation “vested the Governor with no discretion” and therefore, the Governor’s duty under such a statute was merely ministerial. Thus, the Governor must appoint the members recommended by the county legislative delegation giving the delegations great authority in selecting board members.

However, we do not find the legislature gave any additional authority to county delegations outside of their authority to make recommendations for appointment. “A county legislative delegation possesses no inherent powers and cannot exercise sovereign authority, absent a delegation of authority to it by the General Assembly. Op. Att’y Gen., 2005 WL 1609294 (S.C.A.G. June 3, 2005) (citing State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972)). Without specific authority given to the county legislative delegations to oversee the operations of the board members, we do not believe county legislative delegations possess such authority. In our review of the other provisions in article 1, we did not find any specific oversight authority given to county delegations in regard to county boards of voter registration and elections.

In contrast, section 7-5-10 gives the Governor general authority to remove board members for “incapacity, misconduct, or neglect of duty” and specific authority to remove board members for missing meetings. Section 7-3-25 of the South Carolina Code (2019) gives the State Election Commission, through its executive director, the authority to supervise county board’s compliance with state and federal law. This provision also gives the executive director the authority to decertify officials or employees or in some instances recommend termination to the Governor. S.C. Code Ann. § 7-3-25(C). Furthermore, section 7-1-5-10(A)(6) places responsibility on county boards of voter registration and elections to hire a director and places responsibility on the director to hire and manage staff.

The canon of construction *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius* “holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black’s Law Dictionary 602 (7th ed. 1999)). By specifically giving the Governor the authority to remove board members, the State Election Commission the authority to oversee boards’ compliance with state and federal law, the board the power to appoint the director, and the director the authority to hire and oversee his or her staff, we believe the legislature expressed its intent for others not to possess such authority. Accordingly, in addition to not finding any general oversight authority, we also do believe county legislative delegations have authority to remove board members, oversee a board’s compliance with state and federal law, or oversee the hiring of a county director or his or her staff.

Conclusion

Section 7-1-10 requires the Governor appoint members to county boards of voter registration and elections based upon the recommendation of the county legislative delegation. Therefore, county

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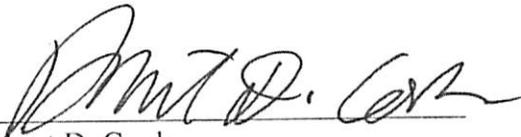
legislation delegations have a significant role in the selection of members to county boards of voter registration and elections. However, we do not find any additional authority allowing county delegations to have any oversight over the operations of these boards. Section 7-5-10 gives the Governor the authority to remove board members and section 7-13-25 gives the State Election Commission, through its director, the power to oversee boards' compliance with state and federal law. Moreover, the legislature, in section 7-5-10, vested board members with the responsibility to appoint a director, who in turn is responsible for hiring and managing staff. As such, we also do not believe county legislative delegations have oversight over the hiring of the director or other board staff.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General