



RICHLAND COUNTY COUNCIL RULES AND APPOINTMENTS

Valerie Hutchinson	Bill Malinowski, Chair	Gwendolyn Davis Kennedy
District 9	District 1	District 7

**SEPTEMBER 21, 2010
4:00 PM**

Administration Conference Room

CALL TO ORDER

Approval Of Minutes

1. September 7, 2010 [PAGES 4-6]

Adoption Of Agenda

- 2.

Items For Action

3. Financial System access for Council Members [WASHINGTON][PAGE 9]

4. Bonding attorneys are to limit their presentations to answering the question asked and only providing the facts of a specific bond. They are not to provide support for or forecast possible future need for the item the bond is being sought. No personal opinion or interjection is to be given [MALINOWSKI]

5. Midlands Workforce Development Board-6 [The nominees for this board are: Reginald Abraham, Leonard Cooper, Fredrick Davis, Sr., Yvonne H. Manley, Rosalind Miller and Joann Richardson] [PAGES 12-18]

6. Clarification of the Rule regarding motions during the Special Called Meeting [MALINOWSKI]

Discussion

7. Attorney General's Opinion Re: Voter's Registration and Election Commission [PAGES 21-28]

Adjournment



Richland County Council Request of Action

Subject

September 7, 2010 [PAGES 4-6]

Purpose

Minutes of



RICHLAND COUNTY COUNCIL RULES AND APPOINTMENTS COMMITTEE SEPTEMBER 7, 2010 4:00 PM

MEMBERS PRESENT:

Member Chair, Bill Malinowski
Member Valerie Hutchinson
Member Gwendolyn Davis Kennedy

ALSO PRESENT- Larry Smith, Tony McDonald, Monique Walters

CALL TO ORDER

The meeting was called to order at approximately 4:03 p.m.

APPROVAL OF MINUTES

The minutes for July 20, 2010 was approved as submitted.

ADOPTION OF AGENDA

The agenda was adopted as submitted.

INTERVIEWS

Accommodations Tax Committee, Hospitality-2 – No applications was received. The Committee recommended these vacancies be re-advertised.

Appearance Commission, Landscaper/Landscape Architect-1- No applications was received. The Committee recommended this position be re-advertised.

Building Codes Board of Adjustments & Appeals, Licensed Contractor-1- No applications was received. The Committee asked that this position be re-advertised.

Business Service Center Appeals Board-1- Two applications was received; both applicants, Samuel J. Boyd and Terris Riley were interviewed. The Committee recommended Mr. Boyd for appointment.

Community Relations Council-2- Two applications was received; applicants, Prentiss McLaurin (incumbent), and Delores Saini interviewed. The Committee recommended both applicants for appointment.

Historic Columbia Foundation-1- Applications was received from Rena N. Grant and Carolyn F. Yarborough. The Committee recommended Ms. Grant for appointment.

Internal Audit Committee-2- No applications were received for this board; the Committee asked that this be re-advertised.

ITEMS FOR ACTION

Financial System access for Council Members [WASHINGTON]- The Committee recommended this item be kept in committee and staff determine the possible dangers for Council having access to the system.

Midlands Workforce Development Board-6 [the nominees for this board are: Reginald Abraham, Leonard Cooper, Fredrick Davis, Sr., Yvonne H. Manley, Rosalind Miller and Joann Richardson]-this item was kept in Committee, and the committee requested Ms. Bonnie Austin submit in writing how precise or in depth is the background check her agency conducts; also the Committee wants to visit the idea of taking the selection of nominees back from Midlands Workforce and establishing this board as a regular county board.

DISCUSSION

Attorney General's Opinion Re: Voter's Registration and Election Commission- This item was kept in Committee since the AG's opinion was not received prior to the meeting.

Bonding attorneys are to limit their presentations to answering the question asked and only providing the facts of a specific bond. They are not to provide support for or forecast possible future need for the item the bond is being sought. No personal opinion interjection is to be given [MALINOWSKI]- This item was kept in Committee, but the Committee recommended this item be moved to an Item for Action on the next committee agenda.

Clarification of the Rule regarding motions during the Special Called Meeting [MALINOWSKI]- This item was kept in Committee, but it was recommended that this item be moved to an Item for Action on the next committee agenda.

OTHER ITEMS

East Richland Public Service Commission-the representation of each service district- Mr. Malinowski spoke with Councilman Jim Manning during the August break

and received clarification of how the districts are represented. Mr. Malinowski directed that staff notify the persons selected of their appointment to the board.

ADJOURNMENT

The meeting adjourned at approximately 5:17 pm.

Minutes transcribed by Monique Walters

Richland County Council Request of Action

Subject

Purpose

Richland County Council Request of Action

Subject

Financial System access for Council Members [WASHINGTON][PAGE 9]

Purpose

DRAFT

Guidelines for Council use of the IFAS Program:

Provide “Read Only” and individual council account access to IFAS software for council members.

The IFAS Software will allow council members to perform the following types of budget analysis:

- Analyses current or prior-year budget
- Review actual expenditure information
- Track revenue information
- Run “what if” scenarios using the budget module
- Review at individually budgeted items
- Create trend analysis from current and prior year actuals.
- Print or download budget preparation documents
- Track budgets thought-out the current year

Richland County Council Request of Action

Subject

Bonding attorneys are to limit their presentations to answering the question asked and only providing the facts of a specific bond. They are not to provide support for or forecast possible future need for the item the bond is being sought. No personal opinion or interjection is to be given **[MALINOWSKI]**

Purpose

Richland County Council Request of Action

Subject

Midlands Workforce Development Board-6 [The nominees for this board are: Reginald Abraham, Leonard Cooper, Fredrick Davis, Sr., Yvonne H. Manley, Rosalind Miller and Joann Richardson] [**PAGES 12-18**]

Purpose



MIDLANDS WORKFORCE DEVELOPMENT BOARD

Working Together for Tomorrow's Workforce

June 23, 2010

The Midlands Workforce Development Board is requesting that the County Council appoint new members to fill the following vacant seats.

1. The following individuals are submitted for your consideration to appointment to the Midlands Workforce Development Board for Richland County:

Ms. Joann Richardson, Wateree Community Action Agency for the Community Action Agency seat.

Mr. Leonard Cooper, International Brotherhood of Electrical Workers as the Labor seat.

Mr. Reginald Abraham, Mars Petcare as a private sector representative.

2. The following individuals are submitted for your consideration to appointment to the Midlands Workforce Development Board's Youth Council for Richland County:

Mr. Fredrick Davis Sr, Dynamic Educational System

Ms. Yvonne Manley, Columbia Housing Authority

Ms. Rosalind Miller, Retired from Office of Economic Opportunity

Thank you for your attention. If there are any questions please contact Ms. Bonnie Austin at 803 744 1670 ext 101 or by email at baustin@mwdb.org



APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION

Name: Reginald Abraham

Home Address: 500 Silver Spoon Lane, Elgin, SC 29045

Office Address: 1720 Pineview Drive, Columbia, SC 29209

Job Title and Employer: Safety/Environmental Coordinator, Mars Petcare

Telephone: (home)803-730-1351 (work) 803-695-3176

Educational Background: Bachelor Degree - Industrial Technology; Master- HR Development

Professional Background: 12 years Training, Quality, Operations and Safety

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Midlands Workforce Development Board

Reason for interest: Desire to serve Midlands area job seekers and businesses, through local workforce development.

Characteristics/Qualifications which would be an asset to Committee/Board/ Commission:
Strong experience, education and ties to the local business community will provide fresh perspectives to the Workforce Investment Board.

Presently serve on any County Board/Commission/Committee? No

Any other information you wish to give? _____

Recommended by Council Member(s): _____

Applicant's Signature Reginald Abraham Date 6/2/10

One form must be submitted for each committee on which you wish to serve.



APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION

Name: Leonard Cooper

Home Address: 3617 Ardincaple Drive, Apt G; Columbia, SC 29203

Office Address: 3617 Ardincaple Drive Apt G; Columbia, SC 29203

Job Title and Employer: Electrician; International Brotherhood of Electrical Workers (IBEW) 778

Telephone: (home)803-256-1214 (work) 803-361-5659

Educational Background: High School graduate

Professional Background: 26 Years service; electrician

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Midlands Workforce Development Board

Reason for interest: Desire to serve the Midlands community in workforce development and training

Characteristics/Qualifications which would be an asset to Committee/Board/ Commission:
Experience and involvement with organized labor will bring additional dimensions and perspective to Midlands WIA board.

Presently serve on any County Board/Commission/Committee? No

Any other information you wish to give? N/A

Recommended by Council Member(s): _____

Applicant's Signature Leonard Cooper Date 5/10/10

One form must be submitted for each committee on which you wish to serve.



APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION

Name: Joann Richardson

Home Address: 1537 Crossing Creek Road, Eastover, SC 29044

Office Address: 3220 Two Notch Road (DSS Building), Columbia, SC 29202

Job Title and Employer: Richland County Coordinator, Wateree Community Action

Telephone: (home) 803-695-0709 (work) 803-786-4250 ext. 103

Educational Background: 2 Year college - Midland Tec

Professional Background: Richland County Coordinator - Wateree Community Action (11 yrs)

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Midlands Workforce Development Board

Reason for interest: Desire to serve the Midlands community in workforce development and training

Characteristics/Qualifications which would be an asset to Committee/Board/ Commission: Experience and involvement with community empowerment and economic enhancement through work at Wateree Community Action and service on the Cooperative Ministries Board

Presently serve on any County Board/Commission/Committee? Cooperative Ministries Board

Any other information you wish to give? _____

Recommended by Council Member(s): _____

Applicant's Signature

Joann Richardson

Date 4/21/10

One form must be submitted for each committee on which you wish to serve.



APPLICATION FOR SERVICE ON RICHLAND COUNTY
COMMITTEE, BOARD OR COMMISSION

Name: Fredrick B. Davis Sr.

Home Address: 712 Torwood Dr, Columbia, S.C. 29203

Office Address: 1518 Pickens St. Columbia, S.C. 29201

Job Title and Employer: State Project Director/ Dynamic Educational Systems Inc.

Telephone: (803)606-0588 (803)256-9675 ext. 302

Educational Background: Technical training from various Tech Colleges

Professional Background: Working for job corps for the last 12 yrs.

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Midlands Workforce Development Board Youth Council

Reason for interest: To help better our youth for the future job markey

Characteristics/Qualifications which would be an asset to Committee/Board/ Commission:
My time spent working with youth while working in the Job Corps.

Presently serve on any County Board/Commission/Committee? No, I just moved here 6 months ago.

Any other information you wish to give? I have been dedicated to working with youth for the past 20 yrs. It is a passion of mine to help get them ready for the future job market.

Recommended by Council Member(s): _____

Applicant's Signature Fredrick B. Davis Sr.

Date 4/20/10
Item# 5



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Name: Yvonne H. Munley

Home Address: 5914 Wescott Road

Office Address: 1917 Harden Street

Job Title and Employer: Dir. of Occupancy - Columbia Housing Auth

Telephone: (home) 803-732-7959 (work) 803-254-3886 x221

Educational Background: _____

Professional Background: 33 years Public Housing Mgmt. Cert. Public Housing Mgr. & Cert. Housing Specialist

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Midlands Workforce Development Board Youth Council

Reason for interest: would like to impact the future of our youth in a meaningful and lasting way.

Characteristics/Qualifications which would be an asset to Committee/Board/ Commission: Work experience and constant exposure to under-privileged, and often misguided

Presently serve on any County Board/Commission/Committee? No

Currently serve on advisory board of South Carolina Housing Search.

Any other information you wish to give? Have genuine interest in our youth and have been effective in influencing youth in a positive way.

Recommended by Council Member(s): _____

Applicant's Signature Yvonne H. Munley

Date 4/23/10
Item# 5

One form must be submitted for each committee on which you wish to serve.



APPLICATION FOR SERVICE ON RICHLAND COUNTY COMMITTEE, BOARD OR COMMISSION

Name: Rosalind Miller

Home Address: 320 Bradbury Dr. - Columbia, S.C. 29203

Office Address: N/A

Job Title and Employer: Retired

Telephone: (home) 803-786-8540 (work) N/A

Educational Background: _____

Professional Background: Columbia DED, S.C. House Of Representatives Foster Care

Male Female Age: 18-25 26-50 Over 50

Name of Committee in which interested: Midlands Workforce Development Board Youth Council ✓

Reason for interest: To engage young minds, makes a difference.

Characteristics/Qualifications which would be an asset to Committee/Board/ Commission: Training Director with DED, for the unemployed & underemployed and my total involvement with the Foster Care Program for more than 15 years.
Presently serve on any County Board/Commission/Committee? Not at this time.

Any other information you wish to give? NO

Recommended by Council Member(s): _____

Applicant's Signature Rosalind Miller

Date 4/26/10

Richland County Council Request of Action

Subject

Clarification of the Rule regarding motions during the Special Called Meeting [MALINOWSKI]

Purpose

Richland County Council Request of Action

Subject

Attorney General's Opinion Re: Voter's Registration and Election Commission
[PAGES 21-28]

Purpose



HENRY McMASTER
ATTORNEY GENERAL

July 1, 2010

Larry C. Smith, Esquire
Richland County Attorney
PO Box 192
Columbia, SC 29202

Dear Mr. Smith:

We received your letter requesting an opinion of this Office regarding Richland County employees serving on the Richland County Board of Voter Registration. You asked “whether members of the Richland County Board of Voter Registration have a conflict of interest by serving as members of the Board and employees of Richland County.” You also asked “whether the Governor has the authority to name the Chairperson of the Board of Voter Registration.”

As a way of background, you explained in your request letter that “[c]urrently, and consistent with past practice, the members of the Board, appointed by the Governor upon the recommendation of the Senators of the Legislative Delegation, are also employed as full-time staffers within the Richland County Department of Voter Registration. . . . Thus, the Board members have the rights of county employees, perform work of county employees, and are paid a salary as full-time county employees. However, neither Richland County Council nor the County Administrator has the ability to hire, terminate, or discipline the Board members under the South Carolina Code of Laws. Thus, the Board members appear to be their own masters.”

This opinion will address prior opinions of this Office, relevant statutes and caselaw to determine if the county ordinance is valid and if there is a conflict of interest.

Law/Analysis

Self-Appointment

The South Carolina Supreme Court held that “[i]n the absence of constitutional or statutory provision it is, as said in 42 Am.Jur. 955, Public Officers, Sec. 97, ‘contrary to public policy to permit an officer having an appointment power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members.’” Bradley v. City Council of City of Greenville, 212 S.C. 389, 397, 46 S.E.2d 291, 295 (1948).

This Office is not a fact-finding entity, but based on previous conversations, it is the understanding of this Office that the Board of Voter Registration has a history of hiring the Chairperson of the

Mr. Smith
Page 2
July 1, 2010

Board as Director of the Department of Voter Registration. Then, the Director of the Department hires a staff; the staff is comprised of Board members. Therefore, the Board is “appoint[ing] one of its own members” and then each Board member is essentially “conferring an office upon himself.”

Validity of County Ordinance

An “ordinance is entitled to a presumption of validity,” but a “municipal ordinance may not vary state law.” Nevertheless, only a court may set an ordinance aside.” Op. S.C. Atty. Gen., March 3, 2008 (citing City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991)).

S.C. Code § 7-27-405 explains that the “Richland County Election Commission and the Richland County Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7-5-10 and 7-13-70.” In relevant part, S.C. Code § 7-5-10 governs the appointment and removal of board members as follows:

- (A) Between the first day of January and the fifteenth day of March in each even-numbered year the Governor shall appoint, by and with the advice and consent of the Senate, not less than three nor more than five competent and discreet persons in each county, who are qualified electors of that county and who must be known as the “Board of Registration of [Richland] County.” 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.

S.C. Code § 7-5-10(A).

S.C. Code § 7-5-30 articulates the duties of the Boards of Voter Registration as follows:

Such boards shall register and conduct the registration of the electors who shall apply for registration in their respective counties as herein required. Their office shall be at the county seat, and they shall keep a record of all their official acts and proceedings. *Provided*, that nothing herein shall be construed as prohibiting the boards of registration from taking their registration books across adjoining county lines to register qualified electors of their respective county whose regular place of employment is in an adjoining county or who are otherwise unable to get to the county seat during office hours to register. **One member of the board shall constitute a quorum** for the purpose of registering or refusing to register applications for registration. . . .

S.C. Code § 7-5-30 (emphasis added).

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990).

Mr. Smith
Page 3
July 1, 2010

Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 S.C. 735 (4th Cir. 1949). The plain reading of S.C. Code § 7-5-30 instructs board members to conduct registration and keep record of such. It also informs that only one board member is necessary to constitute quorum and register citizens to vote. There is no reference to board members being hired by the county as staff for the department.

Almost every county in South Carolina has interpreted S.C. Code § 7-5-30 to indicate that the Department's staff and Board members should be different individuals, Richland County has adopted an alternative reading. Although Richland County's alternative reading to consider the positions of Department staff worker and Board member as one position is plausible, the better reading is the one adopted by all other counties.

The legislative intent for these positions to be filled by separate individuals is clear. For example, in S.C. Code § 7-5-35(2)(b), the statute explains that "[a]ny **member** [of Board of Voter Registration] appointed or reappointed after a break in service . . . or any **staff person** employed or reemployed after a break in service . . . must successfully complete a training and certification program." The fact that instructions to complete training is addressed to the board members and staff persons separately indicates that the legislature intended for different people to occupy these positions. In a prior opinion we explained as follows:

Before any person can take applications and issue certificates, he, or she as the case may be, must be either appointed as a member of a board of registration pursuant to Section 23-51, 1962 Code, [now codified as S.C. Code § 7-5-10 of the 1976 Code of Laws] or he must be made a deputy member by the board itself pursuant to [S.C. Code § 7-5-20].

Op. S.C. Atty. Gen., September 26, 1968. This opinion explains that members of the board already have the authority to register citizens to vote. Therefore, it is unnecessary and invalid for Richland County to create an employee position for board members.

The Richland County Code of Ordinances, Sec. 2-238(d) states as follows:

- (d) *Voter Registration.* The department of voter registration shall be the operational unit for the county board of voter registration, with each board member being responsible for administrative functions within the department. The board shall be appointed by the Governor of South Carolina, with advice and consent of the county senatorial delegation, and shall be directed by the chair of the board of voter registration, who is appointed by the Governor in the same manner as above. The department shall comply with the requirements of the South Carolina Code of Laws, 1976, as amended, sections 7-5-10 through 7-5-30, and all other relevant state laws. **Such board members shall have all rights of regular county employees**, but shall not have grievance rights as set forth elsewhere in this Code. The department shall be responsible to:

Mr. Smith
Page 4
July 1, 2010

- (1) Provide for the proper registration of all persons qualified to vote;
- (2) Maintain all equipment, books, and records necessary to effect such registration of voters in the country; and
- (3) Operate an office to serve the general public and maintain the records, files and all other relevant information and/or data on voter registration.
- (4) Establish absentee and fail safe voting precincts.

Richland County Code of Ordinances, Sec. 2-238(d) (emphasis added).

The portion of the County Ordinance that gives board members “all rights of county employees” is in conflict with state law. The county ordinance is essentially creating another position for the board members to do what they are already instructed to do under S.C. Code § 7-5-30. One should note that the responsibilities of the board could become burdensome and time-consuming. However, state law provides that the board may appoint others, such as deputy registrars, to help accomplish their tasks and that those individuals may assume the “same power and duties as regular members of the board.” S.C. Code § 7-5-20.

A court would also likely find that the County Ordinance is in conflict with S.C. Code § 4-9-30(7). In an opinion of this Office dated April 6, 1989, we stated as follows:

Section 7-13-70 expressly provides that commissioners of election are appointed by the Governor upon the recommendation of the Senator and at least half of the members of the House of Representative from the county. Since the appointing authority for county election commissioners is by an authority “outside county government”, by Section 4-9-30(7)¹ the General Assembly has mandated that county council possesses no authority in this area, although county election commissioners have been determined in prior opinions of this office

¹ S.C. Code § 4-9-30 states as follows:

Under each of the alternate forms of government listed in § 4-9-20 . . . each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof . . .

- (7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. **This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government. . .**

Mr. Smith
Page 5
July 1, 2010

to be county officers. This conclusion is consistent with 1975 Op. Atty. Gen., No. 4196, p. 246 (November 21, 1975) which concluded that the Home Rule Act effects “no change in the functioning or structure” of county election commissioners.

Op. S.C. Atty. Gen., April 6, 1989. Since the Board of Voter Registration falls under the § 4-9-30 exception, it is outside the authority of the county government to hire the board members as county employees for the Department of Voter Registration. Op. S.C. Atty. Gen., August 31, 1977. Hence, the county ordinance is also in violation of S.C. Code § 4-9-30(7), and therefore, a court would likely find the ordinance to be invalid.

Master-Servant Conflict of Interest

The request letter alludes to a possible master-servant conflict of interest. This opinion will not fully explore the master-servant conflict of interest issue because if a court finds the county ordinance invalid and sets aside the portion giving board members “all rights of county employees,” then the master-servant issue will be moot. Nevertheless, in an effort to avoid the appearance of a conflict, it is the opinion of this Office that it would be best for Richland County to take steps to fill the positions of Board members and staff personnel for the Department of Voter Registration with different individuals. See generally, McMahan v. Jones, 94 S.C. 362 (1913) (“No man in the public service should be permitted to occupy the dual position of master and servant.”) Also, one should note that while a state statute may change, override, or make exception to the common law, such as the master-servant conflict of interest issue, a county ordinance does not have the same power.

One could also make an argument that serving in both functions violates the dual office holding provision.² This Office has repeatedly expressed the opinion that members of voter registration boards are public officers for dual office holding purposes. See, Ops. S.C. Atty. Gen., February 13, 1984; September 6, 1983; October 22, 1982; October 20, 1982.

² Article XVII, Section 1A of the South Carolina Constitution provides that “No person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.” For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). “One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” Id., 58 S.E. 762, 763. Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Mr. Smith
Page 6
July 1, 2010

The title “deputy registrar” or “deputy member” is not used by the board members or by the Richland County Department of Human Resources, yet the board members serving as staff of the Richland County Department of Voter Registration are essentially performing the function of deputy registrar.³ In an opinion of this Office dated February 5, 1968, we held that “the position of deputy member of the board of registration constitutes an office within the meaning of the dual office holding provision.” Op. S.C. Atty. Gen., February 5, 1968. Since both positions are considered officers, there would be a dual office holding violation.

In practice, Richland County has collapsed the position of serving as a board member and the position of working in the Voter Registration office as a full-time employee into one position. This practice has been ongoing for many years; however, in reality, the two positions should be separate and distinct and filled by two different individuals.

Governor’s Ability to Appoint Chairperson of Board

As for the second question posed regarding the Governor’s authority to name the Chairperson of the Board of Registration, we must look to legislative intent of the statute and subsequently to the local ordinance. As mentioned above, in an opinion of this Office dated March 3, 2008, we concluded that “a municipal ordinance may not vary state law,” but we recognized that an “ordinance is entitled to a presumption of validity. Thus, only a court may set an ordinance aside.” Op. S.C. Atty. Gen., March 3, 2008 (citing City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991)).

Also, as mentioned above, it is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 S.C. 735 (4th Cir. 1949).

The Governor, under S.C. Code § 7-5-10, is given express authority to “appoint, by and with the advice and consent of the Senate, not less than three nor more than five competent and discreet persons in each county, who are qualified electors of that county” to serve as members of the Board

³ S.C. Code § 7-5-20 governs deputy members of boards of registration as follows: “The board of registration of each county may appoint deputy members of the board, in numbers as may be necessary, whose terms shall be for a period of time as determined by the boards. The deputy members shall have the same powers and duties as regular members of the board. **The clerk to each board may be made a deputy member of the board for the purpose of taking applications.**” S.C. Code § 7-5-20 (emphasis added).

Mr. Smith
Page 7
July 1, 2010

of Voter Registration, but the Governor is not given express authority⁴ to appoint the chairperson of the County Board of Voter Registration. However, the Richland County Code of Ordinances expressly states that the “chair of the board of voter registration . . . is appointed by the Governor” with the advice and consent of the county senatorial delegation. Richland County Code of Ordinances, Sec. 2-238(d).

In an opinion of this Office dated March 7, 1983, we explained that “the provisions of Section 7-5-10 were directory not mandatory.” Op. S.C. Atty. Gen., March 7, 1983 (citing March 18, 1970). The stronger argument is that since the state statute is silent on the issue of the Governor’s appointment of the Chairperson and the county ordinance could plausibly be harmonized with state law, the relevant portion of the county ordinance should be found valid. However, one could also argue that S.C. Code §§ 7-13-18 and 7-27-255(A)(2) are clear that the county election commission or the county in general is responsible for electing the chairman.

If a court finds that the Governor may appoint the Chairperson, the Governor should be mindful that he or she must do so consistent with the terms of S.C. Code § 7-5-10. Also, the Governor should be mindful that he or she may not appoint anyone beyond who has already been appointed as a member of the board.

Conclusion

Consistent with our prior opinions and interpretation of state law, it is the opinion of this Office that simultaneously serving as a member of the Richland County Board of Voter Registration and working as staff for the Richland County Department of Voter Registration would be a conflict under Bradley v. City Council of City of Greenville because each Board member is using his or her power to “confer an office upon himself.” Bradley, 212 S.C. 389, 397 (1948).

Only a court may set aside a municipal ordinance, but it is the opinion of this office that a court would likely conclude that the portion of the Richland County Code of Ordinances giving members of the board “all rights of regular county employees” is invalid. Sec. 2-238(d). Although county ordinances are presumed valid, they are only presumed valid if there is no conflict with state law. Here, the ordinance conflicts with state law, both Title 7 and Title 4. In violation of S.C. Code § 7-5-30, the county essentially creates an employee position to do what the board is already instructed to do⁵ or what the board is to delegate to others under state law⁶. In violation of S.C. Code § 4-9-30(7),

⁴ Cf. S.C. Code § 7-13-80 (“The county election commission must appoint the chairman of the board of managers.”); S.C. Code § 7-27-255(A)(2) (“The county shall appoint the board’s chairman.”)

⁵ S.C. Code § 7-5-30

⁶ S.C. Code § 7-5-20

Mr. Smith
Page 8
July 1, 2010

the county is exercising power that it does not have to hire county employees for a position "outside county government." See, Op. S.C. Atty. Gen., August 31, 1977.

To avoid such a conflict, members of the Board of Voter Registration could, of course, resign their positions as Board members and retain their positions as county employees on staff for the Department of Voter Registration or vice versa.

As for the second question, it is unclear how a court would decide, but it is the opinion of this Office that a court would likely find that although S.C. Code § 7-5-10 does not expressly give the Governor authority to appoint the chairperson of the Richland County Board of Voter Registration, the Richland County Code of Ordinance does give such authority and should be followed. A court could find that the Richland County Code of Ordinance Sec. 2-238(d) can be harmonized with state law, and it does not compromise the legislative intent of S.C. Code § 7-5-10 so long as the Governor does not appoint as Chairperson anyone beyond the board members. Therefore, the ordinance allowing the Governor to appoint the Chairperson is likely to be found valid.

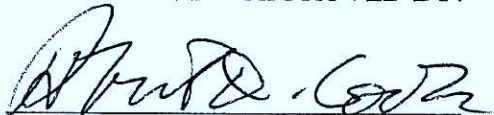
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General