ALAN WILSON
ATTORNEY GENERAL

August 30, 2023

Howard M. Knapp
Executive Director
South Carolina Election Commission
P.O. Box 5987
Columbia, SC 29250

Dear Director Knapp:

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

> The South Carolina State Election Commission (SEC) writes to request an opinion on what constitutes a quorum of a county's board of voter registration and elections when there are fewer than the statutorily required number of members currently appointed or actively sitting on the board.
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> Each South Carolina county has an appointed board whose business is to conduct voter registration and elections in its respective county (hereinafter, "County Board" or "County Boards"):
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> > 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 [County Board]. 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.
>
> S.C. Code § 7-5-10(A)(1).

Currently, appointed members of County Boards serve a four-year term. S.C. Code § 7-5-10(B)(1). However, County Board members will serve "until their successors are appointed and qualify", and may succeed themselves in their seats. Id. Vacancies on the County Board are filled in the same manner as the original appointment and serve for the remainder of the unexpired term of the vacant member. S.C. Code § 7-5-10(B)(4).

County Boards are statutorily obligated to act in various ways. For instance, a County Board must hire a director, who will be responsible for hiring and managing the Board's staff. S.C. Code § 7-5-10(B)(6). After elections, County Boards are to meet and organize as their respective counties' board of canvassers, canvass the votes, and transmit their findings to the SEC. See S.C. Code §§ 7-17-10, 7-17-20. The constituted boards of canvassers "shall make such statements of the votes of the precincts of each county as the nature of the election shall require, within ten days from their first meeting, and shall transmit to the Board of State Canvassers any protest and all papers relating to the election." S.C. Code § 7-17-80.

All the duties described above require the members of a County Board (or board of canvassers) to meet and act as required. Section 7-5-10(B)(2) requires that "[m]embers must be present at a meeting in order to vote." However, neither that code section nor anything elsewhere in Title 7 states a specific quorum requirement for County Boards. Presumably then the quorum requirement stated under South Carolina's Freedom of Information Act applies: "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body." S.C. Code § 30-4-20(e).

It would appear that, at a minimum, a County Board must have had at least five members appointed in order to become a constituted board and therefore capable of acting to fulfill its various statutory obligations. A simple quorum of such a County Board would be three of its members. However, as noted earlier in this letter, the number of County Board seats are not static or established; a County Board may have anywhere from five to nine appointed members at any given time.

Your letter presents several scenarios for consideration of whether a quorum exists and the status of the hypothetical county boards. Moreover, in subsequent correspondence, you ask whether the Governor is authorized to make emergency appointments if a county delegation fails to make recommendations for appointment to a county board. This opinion will evaluate the legal authorities relevant to those issues in the analysis below.

Law/Analysis

While not free from doubt, it is this Office's opinion that the total number of members on a county board of voter registration and elections ("county board") may be increased or decreased by the legislative delegation of that county. Further, it is this Office's opinion that, aside from registering applications, a quorum for a county board requires the presence of a majority of its membership. See Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("In the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum."). Finally, it is this Office's opinion that S.C. Code § 7-5-10(B)(4) requires vacancies on a county board to be filled by appointment of the Governor, upon the recommendation of the legislative delegation of that county.

I. Who selects the number of members on a county board of voter registration and elections, and whether the number can be varied.

Section 7-5-10 of the South Carolina Code establishes how county board members are appointed, their training and certification requirements, specifies circumstances which necessitate their removal, and how their vacant seats are filled. As noted in your letter, subsection (A)(1) provides that the Governor appoints county board members based upon the recommendation of the respective county delegation.[1] The members are directed to take and subscribe an oath of office which is filed with the office of the clerk of common pleas of the county, or, in specific circumstances, with the office of the Secretary of State. See S.C. Code § 7-5-10(A)(2)-(3). The Governor provides the State Election Commission ("SEC") with written notification of the appointments. See S.C. Code § 7-5-10(A)(4). Finally, the board notifies the SEC in writing of the names of the persons elected chairman and officers. See S.C. Code § 7-5-10(B)(5). Section 7-5-10 does not, however, require anyone to file written documentation of the number of members on a particular county board with either the SEC or the Governor's Office. Section 7-5-10(A)(1)

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[1] The duty to appoint here is ministerial as it is based on the "recommendation" of the delegation. See, e.g., Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51, 54 (1936) (emphasis in original).

> The statute provides that the appointment *shall be made by the Governor upon the recommendation of a majority of the members of the General Assembly from Cherokee county*. It is clear that the use of the word "discreet," as applied to the person to be recommended by a majority of the delegation, is only for their guidance, and affords no occasion for the exercise of any judgment or discretion on the part of the Governor.

permits a range of five to nine members on county boards. Your letter posits that "the number of County Board seats are not static or established; a county board may have anywhere from five to nine appointed members at any given time." Assuming the number of members on a county board can be varied, the letter asks how quorum is determined.

In order to determine if the number of seats on a county board are fixed or may be varied, and if so, by whom, this opinion will analyze section 7-5-10 according to the rules of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly's intent. See 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). Alternatively, "where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley Cnty., 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465, 468 (2010); see also Op. S.C. Atty. Gen., 2000 WL 1347162 (Aug. 25, 2000) (The meaning of related statutes and their effect must be determined with reference to each other so as to "construe them together into one integrated system of law."). With these principles in mind, this opinion will analyze section 7-5-10 and related statutes to ascertain legislative intent regarding whether the number of members on a county board may be changed.

Section 7-5-10 is ambiguous in regard to whether the number of members on a county board may be varied. In relevant part, it states, "The total number of members on the board must not be less than five nor more than nine persons." Id. The plain language of the statute does not address how the number of members is determined, by whom, or whether the number of members may be amended. There are several similar statutes that permit a range of council members, commissioners, or board members and have provisions clearly stating the method of choosing the number of members in the body. For instance, S.C. Code § 4-9-810 allows counties to adopt a council-manager form of government with "not less than five nor more than twelve members." Section 4-9-10 requires each county to have two public hearings and conduct a referendum to select the form of government. Subsection (c) permits a change in the number of members following a referendum. See S.C. Code § 4-9-10(c). Under this statutory scheme, the number of

members is determined by the outcome of a referendum.[2] In contrast, section 7-5-10 and related statutes omit a similar mechanism for choosing the number of members.

The legislative history of section 7-5-10 demonstrates that the initial number of members on each county board carried over from the former county election commissions, voter registration boards, and combined boards when those bodies were abolished in 2014. See 2014 Act No. 196. Prior to the 2014 Act, Chapter 27 of Title 7 codified the laws specific to each of these bodies, including the number of members. See S.C. Code §§ 7-27-210, -435 (Supp. 2013).[3] In 2011, the General Assembly enacted Act 17 which merged the Richland County Election Commission and the Richland County Board of Registration. See S.C. Code § 7-27-405 (Supp. 2013). In 2013, Judge G. Thomas Cooper, Jr. held that Act 17 was unconstitutional as single county and special legislation in violation of South Carolina Constitution Article III, § 34 and Article VIII, § 7. See South Carolina Public Interest Foundation v. Courson, No. 2012CP4007790, 2013 WL 12290023 (S.C. Com. Pl. Aug. 26, 2013). While the ruling in Courson only held Act 17 of 2011 to be unconstitutional, the General Assembly repealed Chapter 27, Title 7 in its entirety. See 2014 Act No. 196, § 7. Again, the 2014 Act explicitly abolished the previous bodies and devolved their powers and duties on the newly created county boards. S.C. Code § 7-5-10(C). The members serving on those bodies were directed to "continue to serve in a combined governing capacity until at least five members of the successor board members" were appointed and qualified. Id. Therefore, at least initially, the new county boards were required to retain the same number of members as had been appointed to the prior bodies.

While the newly created county boards retained the same number of members initially, these boards were not required to retain the same number of members after five successor board members were appointed. In fact, in some cases the membership totals may have exceeded, and in one instance certainly exceeded, the new nine-member maximum. For instance, the Calhoun County Board of Elections and Registration had "ten members of the board." S.C. Code § 7-27-250 (Supp. 2013). Although the statute does not expressly state how the number of members was

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[2] Another example of a permitting a range of seats on a statutorily authorized body can be found in Chapter 3, of Title 31 regarding the creation of city housing authority commissions. A municipality creates such a commission by adopting a resolution. See S.C. Code § 31-3-340. The municipal "council shall appoint not less than five nor more than seven persons as commissioners." The resolution establishing the commission provides a written record of the number of commissioners selected. Additional examples include S.C. Code § 33-45-100 (Cooperative Associations); S.C. Code § 38-31-50 (S.C. Property and Casualty Insurance Guaranty Association); S.C. Code § 46-39-90 (Farmers' Associations).

[3] Those counties that did "not have combined boards of registration and election commissions must have their members appointed ... as provided in Section 7-5-10 and 7-13-70." S.C. Code § 7-27-110 (Supp. 2013). The method of appointment to these bodies is discussed in the analysis below.

determined for each county board, the legislative history suggests that power now rests with the county legislative delegation. Prior to the 2014 Act, the former county boards of registration also permitted a range of "not less than three nor more than five" members, but those appointments were made by Governor with the advice and consent of the Senate. S.C. Code § 7-5-10(A) (Supp. 2013). In contrast, while the membership for the county commissions of election were permitted the same range of "not less than three nor more than five" commissioners, those appointments were made by the Governor "upon the recommendation of the senatorial delegation and at least half of the members of the House of Representatives from the respective counties." S.C. Code § 7-13-70 (Supp. 2013). Currently, section 7-5-10(A)(1) more closely follows the model of the appointment statute used for the county commissions of election as it assigns the county legislative delegations with the task of recommending competent and qualified electors to the Governor for appointment. Because the appointment process begins with a county legislative delegation's recommendation, it appears the General Assembly intended for the delegation to determine the number of members necessary to serve the county. Therefore, while it is not free from doubt, it is this Office's opinion that section 7-5-10(A)(1) authorizes each county legislative delegation to determine the number of members who serve on its respective county board of voter registration and elections.

Moreover, it is this Office's opinion that a county legislative delegation is authorized to vary the number of members on the respective county board. Again, the plain language of section 7-5-10 does not directly address whether the number of members can be increased or decreased. Subsection (B)(1) states that "the term of office for the members of the board is four years, and until their successors are appointed and qualify." This language could be interpreted to mean General Assembly did not mean for the number of members to be decreased. However, describing a finite term of office to continue "until their successors are appointed and qualify" has been construed to ensure continuity of membership. For instance, in Rogers v. Coleman, 245 S.C. 32, 34, 138 S.E.2d 415, 417 (1964), the South Carolina Supreme Court held the statute establishing the county commissioners of election which used this same language clearly demonstrated legislative intent "to make provision against a situation where there would be no qualified commissioners to conduct and hold elections." It is this Office's opinion that a court would similarly construe section 7-5-10(B)(4) to protect against the total membership of a county board falling below the statutory minimum of five members and threatening quorum rather than prohibiting an intentional reduction of the number of members by a county legislative delegation.

There is support in the legislative history of section 7-5-10 for holding the number of members can be varied. Before 1970, both the statutes creating the former county boards of registration and the county election commissions fixed the number of members on each body at three. Act Number 1034 of 1970 was titled, "An Act to amend Section 23-51 of the 1962 Code

[now codified at S.C. Code § 7-5-10] ... so as to provide that the number of members may be increased." 1970 (56) 2337 (emphasis added). Section 1 of the Act struck the word "three" and replaced it with "not less than three nor more than five." Id. Appointments to these former county boards of registration were made "[b]etween the first day of January and the fifteenth day of March in each even-numbered year." S.C. Code § 7-5-10(A) (Supp. 2013).[4] Therefore, historically, these bodies were subject to varying the number of their membership on a biannual basis. Section 7-5-10 does not include this same language regarding appointments occurring in "each even-number year," but it still permits a range for the total number of members. Thus, it may be reasonable to construe section 7-5-10(A) to allow varying the number of members, but the change in membership no longer must occur within the same fixed date range in each even-numbered year.

From your letter, this Office understands the SEC has interpreted section 7-5-10 to permit the total number of members on a county board to vary. It is this Office's long-standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013); see also Kiawah Dev. Partners. II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) ("[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations."). The South Carolina Code requires the SEC, through its executive director, to supervise the county boards' conduct of elections and voter registration for compliance state and federal law. S.C. Code § 7-3-20 (2019). Therefore, because we find this interpretation to be a reasonable one based on the analysis above, a court may well defer to the SEC's conclusion that the total number of members on a county board may be varied.

We caution that that the text of section 7-5-10 provides no direct assurance that the number of members of a county board of voter registration and election may be varied.[5] Legislative clarification may be warranted to confirm the General Assembly's intent. While there is support for each county legislative delegation setting the number of members, there is uncertainty regarding how a delegation should memorialize such a change and when it should do so. Section 7-5-10 does not contain a statutory deadline similar to those for the former county election commissions and county boards of registration for making appointments. Presumably, because there is no deadline, county legislative delegations may make appointments as necessary throughout the year. This Office has opined that county delegations "may adopt rules to employ valid methods of selection, such as a majority of a quorum or even a majority of the entire Delegation, but we advise that such a rule may not be inconsistent with a statute." Op. S.C. Att'y Gen., 2012 WL 6720258 (December 17, 2012). Generally, then, we suggest that the county

[4] Appointments to the county election commissions were made "at least ninety days before the election." S.C. Code § 7-13-70 (Supp. 2013).

[5] We do not address the General Assembly's authority to delegate this decision to a county legislative delegation.

legislative delegations can choose to increase or decrease the membership of a county board of voter registration and elections by vote of a majority of the delegation during open session of a public meeting. See S.C. Code §§ 30-4-60, -70 (establishing requirement for public bodies to hold public meetings open to the public). By voting in open session, the delegation would create a public record of the change to the total membership and thereby offer some protection from litigation challenging whether the county board complied with quorum requirements, particularly where the membership is reduced.

II. Quorum requirements for county boards of voter registration and elections.

Aside from registering applications for registration, it is this Office's opinion that quorum for a county board requires the presence of a majority of the board members. In Williams v. Benet, 35 S.C. 150, 14 S.E. 311 (1892), the South Carolina Supreme Court expressed that the purpose of a quorum requirement is to allow a public body to conduct its business with less than the entire membership present.

> The very purpose in providing for the transaction of business of any given body or tribunal by a quorum is to prevent the stoppage of the public business when a portion of the whole membership may, from any cause, fail to attend at the time appointed; and whether such failure results from death or some temporary cause cannot affect the question.

14 S.E. at 312.; see also State v. McMillian, 349 S.C. 17, 20, 561 S.E.2d 602, 603 (2002) ("This Court has recognized that no valid act can be done in the absence of a quorum."). The Court also held that the common law requires the presence of a simple majority of the membership of a public body to constitute a quorum.

> In the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum. A member who recuses himself or is disqualified to participate in a matter due to a conflict of interest, bias, or other good cause may not be counted for purposes of a quorum at the meeting where the board acts upon the matter.

Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) (citations omitted).[6] This Office has not identified authority specific to a county board's quorum

[6] This common law quorum requirement is consistent with the statutory definition for "Quorum" in the S.C. FOIA you cite in your letter. See S.C. Code § 30-4-20(e).

requirement other than for registering applications for registration. See S.C. Code § 7-5-30 ("One member of the board shall constitute a quorum for the purpose of registering or refusing to register applications for registration."). Therefore, a majority of the members of a county board are required to constitute a quorum of the body for all other purposes. When five members are appointed, the statutory minimum required by S.C. Code § 7-5-10(A)(1), the minimum number of members who must be present to constitute quorum and validly conduct such a board's business is three. See State v. McMillian, 349 S.C. 17, 20, 561 S.E.2d 602, 603-04 (2002) ("This Court has recognized that no valid act can be done in the absence of a quorum."). County boards with six or seven members require the presence of at least four members for quorum. County boards with eight or nine members require the presence of at least five members for quorum.

III. Members who are subject to removal under S.C. Code § 7-5-10(B)(3) or (D)(2).

Sections 7-5-10(B)(3) and (D)(2) require the removal of a county board member from office if the member fails to comply with meeting attendance requirements or does not complete a training and certification program. Subsection (B)(3) 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." S.C. Code § 7-5-10(B)(3) (2019) (emphasis added). Subsection (D)(1) requires county board members to "complete, within eighteen months after a member's initial appointment or his reappointment following a break in service ... a training and certification program conducted by the State Election Commission." S.C. Code § 7-5-10(D)(1) (2019). Subsection (D)(2) then provides that if a member fails to complete the training and certification program, "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."[7] Regardless of which of the two

[7] Because subsection (D)(2) allows the Governor to grant an extension in "exceptional circumstances," removal of a member thereunder is discretionary. See Blalock v. Johnston, 180 S.C. 40, 185 S.E. 51 (1936).

> The Governor is, by the Constitution, invested with certain important governmental or political powers and duties belonging to the executive branch of the state government, and the due performance of these duties is intrusted [sic] to his official honesty, judgment, and discretion. As to these purely executive or political functions devolving upon the chief executive officer of the state, and as to any other duties necessarily involving the exercise of official judgment and discretion, the doctrine is uncontroverted, and settled beyond the shadow of a doubt, that mandamus will not lie to control or compel his action. In other words, the action of the Governor, in the exercise of his political or governmental powers, whether the same are conferred by the Constitution or by statute, cannot be controlled by mandamus.

subsections may be implicated, this Office has consistently recognized "[a]s an officer *de facto*, any action taken as to the public or third parties would be as valid and effectual as those actions taken by an officer *de jure* unless or until a court would declare such acts void or remove the *de facto* officer from office." Op. S.C. Att'y Gen., 2003 WL 2147151 (June 5, 2003). "Until a court removes them or declares their acts void, the law treats all official duties and acts performed by these [officers] as valid with respect to third parties." Id. Applying these principles to the statutes at issue, even when violations are reported to the Governor, a member in violation may be counted to calculate whether a quorum is present until the member is actually removed from office.

IV. Vacancy appointment statutes.

It is this Office's opinion that a court would likely hold vacancies on county boards are filled according to the vacancy appointment provision in sections 7-5-10(A)(1) and (B)(4). The Governor makes vacancy appointments "in the same manner as an original appointment," which is based "upon the recommendation of the legislative delegation of the counties." Id.

This Office previously opined on vacancy appointments on the former county boards of registration. See Ops. S.C. Att'y Gen., 1975 WL 22475 (November 14, 1975); 1972 WL 25275 (April 14, 1972). At the time of those opinions, the statutes establishing the county boards of registration stated, "the Governor fills such vacancy 'in the same manner as provided in [1962 Code] Section 23-51.'" Op. S.C. Att'y Gen., 1972 WL 25275 (April 14, 1972). Section 23-51 stated that appointments were made "by and with the consent of the Senate." Id. The opinion concluded by finding the Governor could appoint a replacement member to a county board of registration "with the advice and consent of the Senate." Id.

A subsequent opinion authored by Attorney General McLeod considered whether then Governor Edwards could make a vacancy appointment when the Senate was not in session. Op. S.C. Att'y Gen., 1975 WL 22475 (November 14, 1975). The opinion noted that obtaining the advice and consent of the Senate was not possible while the General Assembly was not in session and suggested, instead, employing 1962 Code § 14-302 which allowed the Governor to fill vacancies in county offices, now codified at section 4-11-20. Id. In relevant part, section 4-11-20 reads:

> In the event of a vacancy at any time in any of the offices of any county of the State the Governor may appoint some suitable person, who shall be an elector of the

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Id. at 53; see also Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009) ("A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to the exercise of discretion.").

> county, and, upon duly qualifying according to law, he shall be entitled to enter upon and hold the office to which he has been appointed:
> ...
>
> (2) If it be an office which was filled originally by appointment, until the adjournment of the General Assembly at the regular session next after such appointment.
>
> ... Any officer elected to fill an unexpired term under the provisions of this section shall hold office for such term and until his successor shall qualify.

Id. The opinion concluded by stating the Governor was authorized "to fill vacancies on County Boards of Registration under § 14-302 with the terms of your appointees to extend until the adjournment of the General Assembly at its next regular session." Op. S.C. Att'y Gen., 1975 WL 22475 (November 14, 1975).

As described above, the county boards of registration were abolished by 2014 Act No. 196 and their powers devolved to the county boards of registration and elections. Much like the statutory scheme for the prior county boards of registration, the current county board's vacancy provision reads, "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." S.C. Code § 7-5-10(B)(4). Yet, unlike the former county boards of registration, appointments to the current county boards do not require the "advice and consent of the Senate." 1962 Code § 23-51. The Governor still makes the appointments, however, the appointments now are based "upon the recommendation of the legislative delegation of the counties." S.C. Code § 7-5-10(A)(1). Because the recommendations for appointments come from the county legislative delegations, the impossibility of obtaining the advice and consent of the Senate when the General Assembly is not in session no longer presents an obstacle to filling vacancies.[8] The county legislative delegations can hold public meetings throughout the year to vote on recommendations for appointments to county boards as well as other offices assigned to them. Generally, then, it is this Office's opinion that vacancy appointments on county boards are made according to the county legislative delegation's recommendation as required by sections 7-5-10(A)(1) and (B)(4) irrespective of whether the General Assembly is in session or not.

[8] Additionally, the vacancy appointment provisions in S.C. Code § 1-3-210 relating to filling vacancies when the Senate is not in session no longer apply to these offices.

In circumstances where a county legislative delegation fails to make a recommendation for a vacancy on a county board, it is arguable that the Governor's power to fill vacant county offices as authorized in section 4-11-20 may still apply. This Office's opinions have repeatedly concluded members of county boards of voter registration and elections hold a county office.[9] If a county board member holds county office and the member's seat becomes vacant "at any time," the plain language of section 4-11-20 authorizes "the Governor [to] appoint some suitable person." See also S.C. Code § 1-3-220 (Authorizing appointment to fill any vacancy in a county office by the Governor).[10]

The premise that the Governor can make an appointment when a legislative delegation fails to make a recommendation is not without precedent. In Bradford v. Byrnes, 221 S.C. 255, 260, 70 S.E.2d 228, 231 (1952), nearly two years had passed since passage of the "York County Government Act of June 30, 1950, No. 962" (the Act) which required the appointment of members of a county board of directors, and "a majority, including the Senator, of the legislative delegation, ha[d] failed to agree upon, and make, recommendations for the appointments." The South Carolina Supreme Court described the Act to require the appointment of county directors by the Governor "upon the recommendation, quoting from the proviso to section 2(3) of the act, 'by a majority of the legislative delegation from York County, including the Senator.'" Id. at 260, 70 S.E.2d at 230. The Court upheld the trial court's conclusion that the Governor was authorized to make appointments for those offices according to the statutes now codified at sections 4-11-20 and 1-3-220.

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[9] See Op. S.C. Att'y Gen., 2017 WL 6629070, at 2 (December 18, 2017) ("[T]his Office reaffirms our prior opinions and finds that county boards of voter registration and elections are county agencies.").

[10] In relevant part, section 1-3-220 states:

> The following appointments shall be made by the Governor and are in addition to those appointments by the Governor authorized in other provisions in the Code:
>
> (2) An appointment to fill any vacancy in a county office. The person so appointed shall hold office, in all cases in which the office is elective, until the next general election and until his successor shall qualify; and in the case of offices originally filled by appointment and not by election, until the adjournment of the session of the General Assembly next after such vacancy has occurred. The Governor may remove for cause any person so appointed by him under the provisions of this paragraph to fill any such vacancy.

S.C. Code § 1-3-220.

> The facts of this case present no conflict between the terms of these statutes and the York Government Act of 1950. The situation is simply that vacancies under the terms of the latter have come about from the long-continued failure of a majority, including the Senator, of the York County Legislative Delegation to make recommendations pursuant to the terms of the Act. It is the same as if the electors of the county should have failed to elect an elective official, in which case the general law, embodied in the cited statutes, has provided for the filling of the office. The failure of the Senator and enough of the Representatives from York County, who together would constitute a majority of the legislative delegation, to function in accord with the terms of the Act of 1950 has created vacancies in the offices of County Director as effectively as any other means may have done, and has given rise to the power of the Governor to appoint under the general laws which have been cited. As said, there is no present conflict in the statutes, and hence no apparent conflict to harmonize, which latter would be the duty of the court to try, if it were required.

Bradford, 221 S.C. at 265, 70 S.E.2d at 233. It is noteworthy that the Bradford Court found no conflict in the terms of these statutes allowing the Governor to make a vacancy appointment and the Act which called for recommendations from the legislative delegation. Id. at 265. There is no indication from the decision whether there was a provision in the Act addressing vacancies on the newly created five-member County Board of Directors.

In contrast, here, section 7-5-10(B)(4) directly addresses how to fill vacancies on county boards of voter registration and elections. This apparently conflicts with section 4-11-20 where the Governor is authorized to make an appointment "at any time" a vacancy occurs. If a court were to find the terms of S.C. Code §§ 4-11-20 and 1-3-220 conflict with section 7-5-10(B)(4), the terms of section 7-5-10(B)(4) would prevail as the more specific and later adopted legislation.[11]

Perhaps there are scenarios where a court would find the facts do not present a conflict between section 4-11-20 and section 7-5-10(B)(4). For instance, a court may find that if a county legislative delegation informs the Governor it cannot agree on a candidate to recommend, section 4-11-20 would then authorize the Governor to appoint without the delegation's recommendation. The South Carolina Supreme Court recently rejected a construction of a statute which would

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[11] See Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) ("The general rule of statutory construction is that a specific statute prevails over a more general one."); Ramsey v. County of McCormick, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991) ("Under the 'last legislative expression' rule, where conflicting provisions exists, the last in point of time or order of arrangement, prevails.").

permit the county legislative delegation to "simply refuse to submit another name for consideration, leaving the office permanently vacant." Stickland v. Richland County Legislative Delegation, Case No. 2023-1130, at 7 (August 10, 2023). The Court found this outcome, among others, to be an absurdity and "a result the legislature surely did not intend." Id.; see also Bradford, 221 S.C. at 262, 70 S.E.2d at 231 ("As nature abhors a void, the law of government does not ordinarily countenance an interregnum."). In an effort to avoid a similarly unintended vacancy on a county board of registration and elections, particularly where membership is below the statutory minimum and quorum is threatened, a court may well reconcile section 4-11-20 to authorize the Governor to make an appointment if the legislative delegation fails to make the recommendation required by sections 7-5-10(A)(1) and (B)(4) in the first instance. This conclusion is far from certain and legislative clarification may be appropriate.

Conclusion

While not free from doubt, it is this Office's opinion that the total number of members on a county board of voter registration and elections ("county board") may be increased or decreased by the legislative delegation of that county. Further, it is this Office's opinion that, aside from registering applications, a quorum for a county board requires the presence of a majority of its membership. See Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("In the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum."). Finally, it is this Office's opinion that S.C. Code § 7-5-10(B)(4) requires vacancies on a county board to be filled by appointment of the Governor, upon the recommendation of the legislative delegation of that county.

Sincerely,

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REVIEWED AND APPROVED BY:

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