



State of South Carolina Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

March 12, 2013

Director Perry K. Simpson
Legislative Audit Council
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Director Simpson,

This letter is written to provide comment to the Legislative Audit Council's ("LAC") recommendation regarding the gubernatorial removal of local election commissioners and registration board members. According to South Carolina Code Sections 7-5-10, 7-5-35 and 7-13-70, each local election board member and his/her staff must complete, within eighteen months after the member's initial appointment or his/her reappointment, a training and certification program conducted by the State Election Commission ("SEC"). These statutes also provide that "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." The LAC recommends to the Governor that she remove all commissioners and voter registration board members who fail to comply with these statutes. It writes that it found no evidence of any action taken to remove such members. While the Office of the Governor agrees that no individual was removed pursuant to this statute, we disagree that our office took no action to resolve this issue.

While the statute standing alone is clear, the removal process upon notification is vague. Within each relevant section of the statute¹, the Governor is required to remove members that do not complete the training certification program provided by the State Election Commission. This removal requirement is qualified upon the condition that the Governor is given notification. This notification is normally provided by the SEC.

¹ Section 7-5-10(B)(3), regarding Registration of Board Members, Section 7-5-35(B)(3) regarding the combined election and registration commission, and Section 7-13-70 regarding county commissioners.

Once the Office of the Governor is notified, the Governor is allowed some discretion to remove an individual from office if the individual's non-compliance is based upon exceptional circumstances. Although our office agrees that this exception should be used sparingly, the exception does require our office to make contact with each individual to determine whether the exception applies. To clarify, once notification is received, instant removal is not appropriate under the statute.

Actions from the Governor's Office: 2011 Notification

In May of 2011, our office received notification from the SEC listing many individuals that appeared to be out of compliance with the relevant statutes. We mailed each listed individual to inquire about the accuracy of the SEC's records and to encourage their prompt compliance. We received no response from any listed individual, however we understood that the list provided by the SEC may not have been accurate, as several of the listed individuals may not have been actually serving at that time. Below is an excerpt of the letter that our office kept for our records:

As you are aware, §7-5-10, 7-5-35, and 7-13-70 of the South Carolina Code of Laws requires each commission member to complete a training and certification program conducted by the State Election Commission within eighteen months of his or her initial appointment. This program requires appointees to complete three core courses two voter registration/election electives and two additional electives. Members must also complete one additional training course per year in order to remain certified. Pursuant to §7-5-10(B)(3), 7-5-35(B)(3), and 7-13-70(C)(3), individuals who fail to meet these requirements must be removed from the commission "unless the Governor grants the member an extension to complete the training and certification program based upon exceptional circumstances."

Our office will determine whether an exceptional circumstance exists on a case-by-case basis, taking into account the date of initial appointment of the commissioner, the number of classes and type of classes taken by a commissioner, any exceptional reason for failing to meet the requirements, and any other circumstances deemed appropriate for consideration by the Governor's office.

According to records kept by the State Election Commission, which are attached for your review, you have failed to meet the minimum requirements for certification. Please send a letter to our office no later than October 10, 2011, providing an explanation as to the number of classes you have taken, if any, and why you have not yet completed the Election Commission's training and certification program. If we do not receive a response by the date indicated above, we must remove you from the Registration and Elections Commission of York County. Thank you very much for your assistance in this matter.

Actions from the Governors Office: 2012 Notification

On April 5, 2012, our office received a second notification from the SEC, again listing individuals that appeared to be out of compliance with the relevant statutes. Without any research, our office had immediate knowledge that many of the individuals listed had either resigned or were already replaced. Our office also suspected that an even greater proportion had already resigned without our immediate knowledge. Therefore, we subsequently contacted each county for an updated listing on those currently serving as board members and asked the SEC for an updated listing. We obtained this information from the counties and received an accurate,

updated listing from the SEC on September 28, 2012. Once this information was received, ***we discovered that over thirty percent of the individuals originally listed were either back in compliance or had resigned without gubernatorial action.***

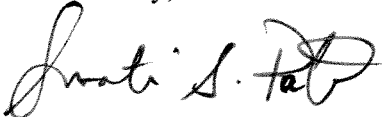
Notice Provided Was Not Adequate

The Office of the Governor asserts that the inaccurate lists provided in April 2012, and likely in May 2011, are not adequate notifications. While we did communicate and work well with the SEC regarding our office's responsibilities, we were unable to rely on the accuracy of lists that were provided to us until September 2012. The statutes cited above state that "the Governor, *upon notification*, must remove that member from the board unless the Governor grants the member an extension ...". The Governor's office believes that notification *based on accurate information*, while not explicitly stated, is clearly implied within the statute. Now that our office has accurate information, we fully intend to make removals as soon as possible after determining whether the board member has an exceptional circumstance that could allow the member to avoid removal.

Conclusion

In summary, while the Office of the Governor agrees that no individual was removed pursuant to this statute, we disagree that our office took no action to resolve this issue as we have explained above. After determining that our office was provided inaccurate information from the SEC, we discovered that over thirty percent of the original names provided were no longer on the lists. We recognize that there are inefficiencies in the current process, and we intend to take diligent action to ensure that information provided to us is accurate, which will help us better identify those board members that should be removed for failure to comply with the training requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Swati S. Patel". The signature is fluid and cursive, with the first name "Swati" being the most prominent.

Swati Patel
Chief Legal Counsel

SP/jpc