

From: Taylor, Richele
To: Philpott, Katie <KatiePhilpott@gov.sc.gov>
Date: 9/2/2016 3:14:02 PM
Subject: RE: SC Petroleum Pipeline Study Committee

Katie – Putting Austin on this too since he was asking.

Short answer: yes, we can appoint someone from Georgia. Please go ahead and appoint their nomination.

Long answer/Legal Background: There is a distinction legally between “officers” appointed and others appointed to positions. *McLure v. McElroy*, 211 SC 106 (SC 1947) established the principal regarding residency, but it also states that “...for offices established only by legislative acts [aka not constitutional office/board appointments], the General Assembly may prescribe *other* and *additional* qualifications which are reasonable in their requirements.” The only limitation the case finds would be running against another constitutional provision, such as a race or religious discriminatory provision. While this case was overruled on other grounds, it has been cited through numerous appeals/AG opinions and upheld in recent years. It has been used to review many requirements. Under the Act, this is a Study Committee and they are “members” not officers. Thus, the constitutional provisions would not apply.

As for what would apply, additional AG opinions/case law have clarified that legislators have the right to add qualifications, not others (such as a town council wanting to limit terms). Thus, if the legislators did not add qualifications none exist. Under this reading, there are no qualifications to serve on this Study Committee other than those listed by the legislative body. The Act states “one member representing the SC Petroleum Council” appointed by the Governor. Thus, there are no requirements of residency and only that the SC Petroleum Council appoints.

Richele

From: Philpott, Katie
Sent: Friday, September 02, 2016 10:54 AM
To: Taylor, Richele
Subject: FW: SC Petroleum Pipeline Study Committee

Do you agree with the analysis that a Georgia resident can serve on the Petroleum Pipeline Study Committee (Act 304 of 2016)?

Katie R. Philpott
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From: Bonnie Loomis [<mailto:LoomisB@api.org>]
Sent: Thursday, August 25, 2016 12:34 PM
To: Philpott, Katie
Subject: RE: SC Petroleum Pipeline Study Committee

Katie –

I hope this week has slowed down just a bit for you!

Following up on this subject, can we discuss this by phone or in person – perhaps with legal counsel? As an attorney, I believe the Governor’s appointment of Mr. Gardner is Constitutionally permitted and consistent with prior action

from her office. Additionally, his appointment is the only practical suggestion from the SC Petroleum Council based on professional expertise and geography.

According to the attached AG opinion, an advisory/study committee position is not an "office" under the Constitutional section you cite below. Neither the committee nor its members are able to exercise the sovereign authority of the state. This is particularly true with such committees that are temporary in nature, as is the case with the petroleum pipeline study committee. Plus, the position lacks other characteristics of public office (statutory qualifications, oath administration, ethics law requirements, etc.)

And, as shown in the attached, it appears Governor Haley acted on a similar legal analysis when she appointed the Thomas Built Bus then-CEO Kelley Platt to the 2012/2013 School Transportation Decentralization Study Committee. If Ms. Platt lived in the same geographic area as where she worked, she was a resident of High Point, NC, when the Governor appointed her to this committee. I expect the records of your office can confirm this reasonable assumption.

Finally, the Senate added a representative of the SC Petroleum Council to this study committee to ensure that the group included an individual with petroleum pipeline operational expertise and policy insight. Given that there are only two petroleum pipelines in the state and one of those two is operated by a company that is NOT a member of the SC Petroleum Council, the only practical appointment from our organization is from Colonial Pipeline. There are other member companies with pipeline operations but, unfortunately, those are all located outside SC – with most being in the states with oil & gas production (LA, TX, OK). A Colonial Pipeline representative from their Atlanta headquarters was as close as we could get.

Again, I would greatly appreciate the chance to discuss all of this further with you and, if needed, legal counsel to the Governor.

Many thanks –
Bonnie

From: Philpott, Katie [<mailto:KatiePhilpott@gov.sc.gov>]
Sent: Tuesday, August 23, 2016 1:31 PM
To: Bonnie Loomis
Subject: RE: SC Petroleum Pipeline Study Committee

I'm pretty busy today, but in order to be appointed to any SC Board/Commission/Committee, a person must be a resident elector of the state a.k.a a SC resident.

See below:

All appointees must reside in AND be registered to vote in South Carolina. Pursuant to Article XVII, Section 1 of the State Constitution: *"No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector."* Pursuant to Section 7-5-110 et al., an elector is a citizen of SC or the US who is registered to vote in the precinct of his residence. In other words, "qualified elector" means "registered elector" – i. e. registered in the county in which he is a resident. Therefore, an individual must be a registered voter in the district he is to represent. Although the authorizing statute may not specify residency requirements for a particular office, it must be necessarily implied to prevent circumvention of the Constitution.

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From: Bonnie Loomis [<mailto:LoomisB@api.org>]
Sent: Tuesday, August 23, 2016 12:48 PM
To: Philpott, Katie

Subject: RE: SC Petroleum Pipeline Study Committee

Katie – Can you give me a call @ 803-719-6202 as soon as possible to discuss? Hoping you can add more context for me on the residency requirement before I share this with my members. Since it is not stipulated in the Act, we did not integrate that into our internal process for nominating. Thanks!

From: Philpott, Katie [<mailto:KatiePhilpott@gov.sc.gov>]
Sent: Tuesday, August 23, 2016 12:10 PM
To: Bonnie Loomis
Subject: RE: SC Petroleum Pipeline Study Committee

Actually, I was just checking his resume and noticed that he is not a SC resident. Unfortunately, in order to be eligible to serve, the nominee must be a SC resident.

Sorry for the hassle.

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From: Bonnie Loomis [<mailto:LoomisB@api.org>]
Sent: Monday, August 22, 2016 12:50 PM
To: Philpott, Katie
Cc: Bonnie Loomis
Subject: SC Petroleum Pipeline Study Committee

Katie –

I hope you had a great weekend!

Thank you, again, for your call earlier this month regarding the SC Petroleum Council seat on this study committee. After a member-based process for nominations and election, the members of the SC Petroleum Council propose to the Governor that Don Gardner with Colonial Pipeline Corporation be appointed to this seat.

Mr. Gardner (resume attached) is currently Director, Business Strategy with Colonial Pipeline having served previously in managerial roles in both operations and finance after a healthy stint in business development and asset optimization for the company. He earned his MBA from Goizueta Business School at Emory University on a merit-based scholarship that covered 100% of tuition and provided a stipend. And, he earned BA degrees in both Economics and Mathematics from UNC Chapel Hill. He is located in Alpharetta, GA – outside Atlanta – and is committed to the travel required for in-person attendance at these meetings.

As you may know, Colonial Pipeline is one of two petroleum pipeline operators in SC. The other is Kinder Morgan, whose new pipeline development activities were the genesis of the legislation that resulted in this study committee. Kinder Morgan is not a member of the American Petroleum Institute, whose members with SC interests comprise the SC Petroleum Council. Colonial was integrally involved in the legislative process and was wholly supportive of the study committee when it was proposed.

Please let me know if you need any further information in this regard. We look forward to the Governor's action in this regard.

Many thanks –
Bonnie

Bonnie Loomis

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