HENRY MCMASTER
ATTORNEY GENERAL

January 2, 2008

Mark C. Brandenburg, Esquire
General Counsel, The Citadel
171 Moultrie Street, Bond 369
Charleston, South Carolina 29409

Dear Mr. Brandenburg:

We understand from your letter addressed to Attorney General, Henry McMaster, that you desire an opinion of this Office concerning the eligibility of individuals serving abroad on military duty to serve on the Citadel Board of Visitors. You explain in your letter:

> As you know, many alumni of The Citadel serve in the United States military. Assignments and deployments take them abroad for months, if not years. Nonetheless, it appears those alumni would remain eligible to be elected as members of the Board of Visitors, so long as they remain "properly registered" to vote in South Carolina. See e.g. S.C. Const. Article II, Section 4 ("Every citizen of the United States and of this State of the age of eighteen and upwards who is properly registered is entitled to vote as provided by law.") (emphasis added). I can find no opinion from the appellate courts of this state, however, which affirms this understanding.

Accordingly, you ask this Office "whether a graduate of the college must merely be a properly registered voter to be eligible for election to the Board of Visitors. Alternatively, must a graduate also be physically resident in the state at the time of and throughout his service on the Board?"

Law/Analysis

Section 59-121-10 of the South Carolina Code (2004) describes the composition of the Citadel Board of Visitors (the "Board"). This provision states:

> The board of visitors of The Citadel, the Military College of South Carolina, shall be composed of the Governor, the Adjutant General and the State Superintendent of Education, who shall be members ex

> officio of the board, and eleven others who shall be graduates of the college, seven of whom are to be elected by joint vote of the General Assembly as hereinafter provided, three of whom are to be elected by such means and methods as may be determined by the Association of Citadel Men or any succeeding organization of Citadel men, the result of election to be certified by the president of the association to the Secretary of State, and one of whom shall be appointed by the Governor. The Governor shall make the appointment based on merit regardless of race or economic status and shall strive to assure that the membership of the board is representative of all citizens of the State of South Carolina.

Section 59-121-10 does not contain a residency requirement. However, as you point out in your letter, article XVII, section 1 of the South Carolina Constitution (1976) states as follows:

> No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector: Provided, The provisions of this Section shall not apply to the offices of State Librarian and Departmental Clerks, to either of which offices any woman, a resident of the State two years, who has attained the age of twenty-one years, shall be eligible.

Our Supreme Court in McLure v. McElroy, 211 S.C. 106, 120, 44 S.E.2d 101, 108 (1947), overruled on other grounds by Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997), interpreted this provision as requiring all officers, appointed or elected, to meet the requirements of an elector.

Section 7-5-120 of the South Carolina Code (Supp. 2006) sets forth the qualifications of an elector. Among these requirements is the requirement that the elector be "a resident in the county and in the polling precinct in which the elector offers to vote." S.C. Code Ann. § 7-5-120. Other than the ex officio members, members of the Board are elected by joint vote of the General Assembly. Therefore, we agree with your assessment that a court would imply a residency requirement for members of the Board. Accordingly, we must determine the impact of a member's deployment or other assignment outside of South Carolina on their eligibility to serve on the Board.

As we concluded in prior opinions: "Residency is a mixed question of fact and law and turns on the individual's intent." Op. S.C. Atty. Gen., July 7, 1999. In an opinion issued by this Office in 1963, addressing the question of residence with regard to election laws, we stated:

> There is no hard and fast rule by which such intent can be demonstrated, but the matter is one for the determination initially of the board of registration, based upon the facts submitted to it. Pertinent factors which a board would consider could include: Has

> the prospective registrant expressed an intent to make this State his permanent home; is he registered to vote in another state and, if so, when did he last participate in an election in another state; is there an ownership of property within this State, such as the acquisition of a homesite; what is his place of residence as set forth on military records, automobile registration, insurance policies, etc.

Op. S.C. Atty. Gen., October 4, 1963. Furthermore, per section 7-5-230 of the South Carolina Code (Supp. 2006), a board of registration, in judging the qualifications of applicants for voter registration, may consider the following proof to establish residence: "income tax returns; real estate interests; mailing address; address on driver's license; official papers and documents requiring the statement of residence address; automobile registration; checking and savings accounts; past voting record; membership in clubs and organizations; location of personal property; and the elector's statements as to his intent." However, this provision also states the board is not limited to this list. S.C. Code Ann. § 7-5-230.

In our review of both the factors suggested in our 1963 opinion and those the Legislature suggests the board of registration consider when determining residency, we believe an individual serving in the military outside of South Carolina can nonetheless provide proof of his or her intent to remain a South Carolina resident. In addition, we note the provision contained in the federal Servicemembers Civil Relief Act, which guarantees residence for military personnel.

> For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence--
>
> (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
>
> (2) be deemed to have acquired a residence or domicile in any other State; or
>
> (3) be deemed to have become a resident in or a resident of any other State.

50 App. U.S.C.A. § 595. Accordingly, we are of the opinion that an individual who otherwise has established residency in South Carolina, but is absent from the State due to military service, can nonetheless satisfy the qualifications of an elector. As such, we believe this individual's eligibility to hold an office would not be effected due to their absence from the State due to military service.

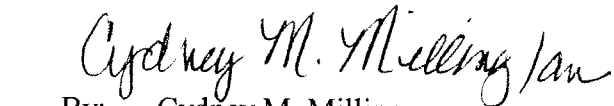
We also note that the Legislature, through the enactment of chapter 7 of title 8 of the South Carolina Code, dealt with instances in which officers are absent due to military service. These provisions explain that a public officer absent due to military service creates a temporary vacancy in the office. S.C. Code Ann. § 8-7-30 (1986). However, these statutes also state that the officer is entitled to possession of his or her office upon his or her return. S.C. Code Ann. § 8-7-30 (1986). Thus, these statutes further support our understanding that an individual is not prohibited from serving as a public officer despite miliary assignments that may take that individual out of South Carolina. However, absences due to military service may create a temporary vacancy in the individual's office.

Conclusion

Based on our analysis above, we are of the opinion that an individual's residency for purposes of qualifying as an elector, is not necessarily affected by his or her miliary service outside the State. Thus, presuming the individual satisfies the qualifications of an elector under section 7-5-120, the individual also meets the qualifications to hold office under article XVII, section 1 of the South Carolina Constitution. Accordingly, we do not believe the sole fact that an individual is currently absent from the State due to military service, prohibits that individual from seeking and obtaining a position on the Board. However, we note the provisions of chapter 7 of title 8 of the South Carolina Code may apply should a member of the Board of Visitors be absent due to military service.

Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:

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