

July 12, 2007

Mark C. Brandenburg, General Counsel
The Citadel
171 Moultrie Street, Bond 369
Charleston, South Carolina 29409-6480

Dear Mr. Brandenburg:

In a letter to this office you indicated that The Citadel Board of Visitors has revised its *College Regulations* which serve as the governing rules for The Citadel. Recently, the Board approved an amendment allowing for the selection of emeritus members and allowing these emeritus members to vote in committee meetings, including standing committees of the Board, although the Board restricted emeritus members from voting on appeals. You indicated that the Board did not attempt to give voting rights to emeritus members at meetings of the full Board. You have questioned the propriety of such recent action particularly with regard to giving emeritus members the authority to vote in committee.

The provisions regarding emeritus members referenced by you are set forth in Section IX dealing with organization and operating rules of The Citadel Board of Visitors. Section I(f) of such provision states that

Emeritus Members. A member of The Citadel Board of Visitors who terminates membership after a total of eighteen years of service and who, in the opinion of the Board, has contributed significantly to the governance of the College, may be selected to be named "Member Emeritus" if this action is supported by an affirmative vote of three-fourths of the votes cast.

Pursuant to Section 3(h) dealing with voting,

...emeritus members shall have the right to make comments and/or express opinions on their own behalf, but **shall not** have voting rights at Board of Visitors meetings. Emeritus members shall have full voting rights in committees to which they are assigned, except in matters of appeals.

Mr. Brandenburg
Page 2
July 12, 2007

As to standing committees of the Board, Section 4(a) states that

It is contemplated that much of the detailed work of the Board of Visitors shall be accomplished by committees. In general, committees investigate, formulate plans, and make recommendations to the Board for action. A committee shall have only such powers to act as may be specifically granted to it by the Board.

Prior opinions of this office have dealt with the authority of emeritus members of boards generally. An opinion dated February 26, 2003 citing an opinion dated February 9, 1983 stated that

(w)here a position is purely honorary and the individual in question is serving solely in an emeritus or honorary capacity, we have concluded that “a person serving as member emeritus of a board does not hold an office within the meaning of the provisions of the Constitution prohibiting dual office holding.”

The 2003 opinion also referenced an opinion of this office dated November 1, 1982 which concluded that a “member emeritus” of the State Ports Authority did not hold an office and did not have the right to vote in matters coming before the Authority. It was noted that “[s]uch a designation was deemed simply ‘as an honor’ to the particular individual and thus no sovereign power of the state was being exercised.” Such was consistent with another opinion dated August 27, 1975 which concluded that while a concurrent resolution of the General Assembly had designated a particular individual as “Chairman Emeritus” of The Citadel Board of Visitors, such recognition

...does not alter or abrogate any existing statute relating to the composition and powers of The Board of Visitors of The Citadel and does not confer on...(that individual)...any right, authority or duty with respect to The Board of Visitors. Those rights, powers, and duties are vested by an existing, unchanged statute....

An opinion of this office dated July 12, 1966 indicated that as to an individual elected “chairman emeritus” of the Board of Trustees of the Medical College of South Carolina,

(t)he term “emeritus” refers to an honorary title which one holds after retirement, and such title corresponds to that which such person held during active service...Inasmuch as the title of “chairman emeritus” is merely an honorary one and the statutory law which relates to the Medical College of South Carolina does not provide for such an office with prescribed duties, it is the opinion of this office that one who possesses such a title may not exercise legal responsibilities and functions as a member of the Board of Trustees for the Medical College.

Based upon my review of state statutory provisions dealing with the composition of The Board of Visitors of The Citadel, S.C. Code Ann. §§ 59-121-10 et seq., it does not appear that there are any specific provisions authorizing emeritus positions for The Board of Visitors or providing any

Mr. Brandenburg
Page 3
July 12, 2007

statutory rights to individuals so designated. Therefore, the recent actions by The Board of Visitor in establishing the position of "Member Emeritus" and granting authority for such a member to vote in committee meetings are not pursuant to a specific grant of statutory authority. As a result, consistent with the prior opinions noted above, in the opinion of this office, these emeritus members may not exercise sovereign authority. However, as set forth above, apparently there is no attempt to grant these emeritus members any sovereign authority as it is specifically provided that such members do not have voting rights at Board of Visitors meetings but only have voting rights in committees to which they are assigned. By Section 4(a), committees generally investigate, formulate plans, and make recommendations to the Board for action.

In the opinion of this office, as long as emeritus members of The Board of Visitors are limited in their authority to "investigate, formulate plans, and make recommendations" and thus serve in an advisory position only, it appears that their authority in such regard may be upheld. Again, inasmuch as there is no specific grant of authority by statute for an emeritus position or for the responsibilities of an individual holding an emeritus position, there is no basis for an emeritus member to exercise any sovereign power, such as that exercised by regular members of The Board of Visitors. Instead, an emeritus member must serve in an advisory position only.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General