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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

September 2, 1999

The Honorable Robert W. Hayes, Jr.,  
Senator, District No. 15  
1486 Cureton Drive  
Rock Hill, South Carolina 29732

Dear Senator Hayes:

Your recent opinion request has been forwarded to me for reply. You have raised two questions concerning the York County Board of Disabilities and Special Needs (hereinafter the "Board"). You indicate that the Board was created under the authority of S.C. Code Ann. § 44-20-375. I will answer your questions in reverse order.

**QUESTION 2**

- (2) Is membership on the Board considered a public office, thus requiring all members to be United States citizens?

This Office has previously concluded that one who serves on a county or multi-county board of disabilities and special needs holds a public office. Op. Atty. Gen. dated January 10, 1995. Accordingly, a member of the Board is a public officer.

**QUESTION 1**

- (1) Must a public officer be a United States citizen in the absence of an express statutory requirement?

This issue has been addressed in several prior opinions of this Office. See Op. Atty. Gen. dated June 15, 1984; February 14, 1978 (alien cannot be appointed to an appointive or elective office because not a qualified elector); April 26, 1974 (alien cannot be appointed to serve as a director of South Carolina Public Service Authority). The June 15<sup>th</sup> opinion provides a detailed analysis of this question. This Office addressed the question of whether

request letter

The Honorable Robert W. Hayes, Jr.,

Page 2

September 2, 1999

an individual who was not a United States citizen may be appointed to the Williamsburg County Hospital Board. We found:

Article XVII, § 1 of the South Carolina Constitution (1895 as amended) provides that '[n]o person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector.' Our Supreme Court has interpreted this provision as 'meaning ... that all officers, constitutional or statutory, and whether elected or appointed must be qualified electors ...' *McLure v. McElroy*, 211 S.C. 106, 120, 44 S.E.2d 101 (1947). Like the situation you have presented, the *McLure* case involved the appointment of a member of a hospital board; thus, such a member would be an officer within the meaning of Article XVII, § 1. Moreover, in construing the *McLure* case in the context of a non-citizen desiring to serve 'on a Board or Commission in the State of South Carolina', this office has stated previously:

... under the decisions of our Supreme Court in *McLure v. McElroy*, supra, and *Lee v. Clark*, supra [224 S.C. 138, 145, 77 S.E.2d 485 (1953)], [a person] must be a qualified elector before he can be appointed to serve ... . Therefore, inasmuch as an alien cannot become a qualified elector in the State of South Carolina, it is the opinion of this office that an alien cannot be appointed to serve as a director of the South Carolina Public Service Authority. Op. Atty. Gen., dated April 26, 1974.

In view of the foregoing, it is unlikely that a non-citizen could be appointed to serve as a member of the Williamsburg County Hospital Board.<sup>1</sup>

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<sup>1</sup> The author recognized that this conclusion was complicated somewhat by decisions of the United States Supreme Court invalidating a number of provisions in other states requiring various officials to be United States citizens. The cases generally held that the Supreme Court will subject to strict scrutiny any classification which treats non-citizens differently unless the person occupying the position in question participates directly in the formulation, execution, or review of broad public policy and hence performs functions that go right to the heart of representative government. *Sugarman v. Dougall*, 413 U.S. 634 (1973). These cases also concluded that a state may deny aliens the right to vote, or to run for elective office, for these lie at the heart of the political institutions. In light of these cases, the author found that the presumption of citizenship

The Honorable Robert W. Hayes, Jr.,  
Page 3  
September 2, 1999

These prior opinions indicate the requirement a public officer be a qualified elector as found in Article XVII, § 1 carries with it a requirement that the public officer be a United States citizen. Until a court states otherwise, we must presume that citizenship remains a requirement of appointive public office. As previously stated, a member of the Board is a public officer. Further, it appears that the Board performs functions that go right to the heart of representative government. Therefore, even in the absence of an express statutory requirement, to be properly appointed to the Board, an individual must be a United States citizen.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch  
Assistant Attorney General

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remains effective until a court states otherwise.