



ALAN WILSON
ATTORNEY GENERAL

May 14, 2014

The Honorable Harvey S. Peeler, Jr.
Senatorial District No. 14
213 Gressette Senate Office Building
Columbia, SC 29202

Dear Senator Peeler:

By your letter dated April 10, 2014 you have asked for the opinion of this Office regarding the interpretation of Section 59-130-10 as it relates to the effect of the General Assembly's failure to re-elect a member of the College of Charleston Board of Trustees ("The Board"). Per your letter you explain:

On April 2, 2014, the General Assembly held elections for nine (9) seats on the College of Charleston Board of Trustees. At the time of the election, the at-large seat 15 had one candidate, Mr. Daniel Ravenel, who currently holds the seat. Mr. Ravenel was not reelected.

Act 176 of 2012 reorganized college boards with the creation of a seventh congressional district. Prior to Act 176 of 2012, Mr. Daniel Ravenel held the At-large Seat 13 but was moved to At-Large Seat 15. This year is the first time this seat has been up for elections since the changes in the seats.

In light of these facts you ask "whether Mr. Ravenel continues to serve until his successor is elected or will the seat become vacant July 1, 2014." Our response follows.

Law/Analysis

In previous opinions of this Office we have explained that the failure to re-elect a member of a college or university's board of trustees does not create a vacancy on such a board, but instead results in the individual continuing to serve on the board in a holdover capacity. See

Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (explaining the failure to re-elect members of the College of Charleston’s Board of Trustees resulted in the trustees serving in a holdover capacity); Op. S.C. Atty. Gen., 2013 WL 4873941 (August 28, 2013) (concluding the failure to re-elect a member of the South Carolina State Board of Trustees resulted in the individual serving in a holdover capacity). We now reaffirm those opinions and conclude that Mr. Ravenel, as the current occupant of Seat 15, will continue to serve until his successor is not only elected, but is also qualified pursuant to our construction of Section 59-130-10, the statute dealing with the College of Charleston Board of Trustees. See Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (finding that Section 59-130-10 requires that a successor be both elected by the General Assembly and qualified by taking the oath of office in order to replace an individual serving in a holdover capacity).

A. Our Prior Construction of Section 59-130-10 of the South Carolina Code

On May 29, 2013, this Office issued an opinion interpreting Section 59-130-10 of the South Carolina Code. Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013). In that opinion, we interpreted Section 59-130-10, as implying that an individual serving in a holdover capacity does so until that individual’s successor is not only elected, as expressed in the statute, but is “qualified” through taking the oath of office. Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013). Based upon this interpretation of the statute we reasoned a variety of members of the Board whose successors were elected, but not sworn, continued to stay on as *de jure* officers until their successors were sworn into office.¹ Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013). This conclusion, while obviously based upon the statutory construction of Section 59-130-10, was also based in part on the law of holdovers which explains that because “nature abhors a void, the law of government does not countenance an interregnum.” Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (citing Bradford v. Byrnes, 221 S.C. 255, 262, 70 S.E.2d 228, 231 (1952)).

¹ As this Office has previously mentioned in discussing the law of holdovers, there are two types of holdover officers, a *de jure* officer and a *de facto* officer. Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013). “A *de jure* officer is one who is in all respects legally appointed or elected to the Office and has qualified to exercise the duties of the office.” Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (quoting Op. S.C. Atty. Gen., 1984 WL 249824 n.1 (February 10, 1984) (emphasis in original)). By contrast, “[a] *de facto*’ officer . . . is ‘one who is in possession of an office, in good faith, entered by right claiming to be entitled thereto and discharging its duties under color of authority.’” Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (quoting Op. S.C. Atty. Gen., 1984 WL 249824 n.1 (February 10, 1984) (emphasis in original)); Heyward v. Long, 178 S.C. 351, 367, 183 S.E. 145, 151 (1935).

B. The Current Question is Resolved by our Prior Interpretation

Here, we are asked to determine the effect of the General Assembly's failure to re-elect Mr. Ravenel. Specifically, we must determine whether Mr. Ravenel will continue to serve on the Board following the expiration of his term on July 1, 2014, or whether the expiration of Mr. Ravenel's term will result in Seat 15 becoming vacant. Because we believe our previous interpretation of Section 59-130-10 controls this matter, it is opinion of this Office that following the expiration of his term, Mr. Ravenel will continue to serve as the occupant of Seat 15 until his successor is both elected and qualified per our previous opinion. See Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (finding that Section 59-130-10 requires that a successor be both elected by the General Assembly and qualified by taking the oath of office in order to replace an individual serving in a holdover capacity).

Section 59-130-10 states, *inter alia*, that "[t]he term of office of an elective trustee commences on the first day of July of the year *in which the trustee is elected.*" S.C. Code Ann. § 59-130-10 (2013 Supp.) (emphasis added). As detailed above, we have construed this portion of the statute as impliedly authorizing an individual occupying a seat on the Board to holdover until his successor is both elected and qualified. See Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (stating an individual occupying a seat on the Board does so in a holdover capacity until that individual's successor is not only elected, as expressed in the statute, but is "qualified" through taking the oath of office). This conclusion is consistent with the logic of another opinion of this Office where we explained the failure to re-elect an individual serving on the South Carolina State Board of Trustees did not result in the seat at issue becoming vacant following the expiration of the individual's term. See Op. S.C. Atty. Gen., 2013 WL 4873941 (August 28, 2013) (concluding the failure to re-elect a member of the South Carolina State Board of Trustees resulted in the individual serving in a holdover capacity). As discussed above, both opinions were based in part on the law of holdovers, which, as we explained above, "abhors a void" and "does not countenance an interregnum." Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (citing Bradford, 221 S.C. at 262, 70 S.E.2d at 231). Accordingly, it is the opinion of this Office that, consistent with the rationale of our May 29, 2013 opinion, Mr. Ravenel, following the expiration of his term on July 1, 2014, will continue to serve as a *de jure* holdover until his successor is not only elected, but is qualified per our interpretation of Section 59-130-10. See Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) (finding that Section 59-130-10 requires that a successor be both elected by the General Assembly and qualified by taking the oath of office in order to replace an individual serving in a holdover capacity).

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Conclusion

In light of the foregoing authorities, it is the opinion of this Office that the expiration of Mr. Ravenel's term will not create a vacancy on the Board. Instead we believe, consistent with our prior opinions, that the General Assembly's failure to re-elect Mr. Ravenel will result in Mr. Ravenel continuing to serve on the Board in a holdover capacity as a *de jure* officer until his successor is both elected and qualified.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General