

# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3970

May 12, 1987

William L. McDowell, Jr.  
Deputy Director  
South Carolina Department of  
Archives and History  
Post Office Box 11669  
Columbia, South Carolina 29211

Dear Mr. McDowell:

Assistant Attorney General Jane Johnson has referred your opinion request of April 27, 1987, to the Opinion Section for response. Referencing the statutes relative to the South Carolina Archives and History Commission, you have asked this Office to address several questions concerning the quorum and attendance by proxy at Commission meetings. Each of your questions will be addressed, as follows.

### Quorum

Section 60-11-40(4), Code of Laws of South Carolina (1976), provides that "[f]ive members of the [Archives and History] Commission shall constitute a quorum." Recent statutory amendments now authorize the Commission to consist of eleven (11) members, though the number required to make a quorum remains unchanged. You have asked whether the Commission may transact business with only five members constituting a quorum.

The rule for determining a quorum is stated in an opinion of this Office dated February 23, 1962: "The rule in this State is that in the absence of controlling statute, the common law rule to the effect that a majority of the whole body is necessary to constitute a quorum, applies ... ." As to the Commission, the common law rule has been abrogated by Section 60-11-40(4); by statute, a quorum of the Commission will be less than a majority. See also Ops. Atty. Gen. dated March 8, 1963 and July 10, 1980 (copies of all three opinions are enclosed).

Mr. William L. McDowell, Jr.  
Page 2  
May 12, 1987

When the General Assembly adopts a law on a particular subject, it is presumed that the legislature is familiar with previous legislation on the same subject. Bell v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944). Thus, when the legislature amended the laws relative to the Commission to increase its membership, it must be presumed that this body knew of the quorum requirement and did not opt to amend it when other provisions were being amended.

Therefore, it is the opinion of this Office that the quorum as established by Section 60-11-40(4) of the Code would be an abrogation of the common law as to the Commission, which would be authorized to conduct its business with five members.

#### Attendance by Proxy

You have also asked whether the ex officio and/or the non-ex officio members of the Commission may designate members of their parent bodies to represent them as quorum-counting, voting members of the Commission, when they as regular members cannot attend. The members consist of (ex officio) the heads of the history departments at the University of South Carolina, The Citadel, Clemson University, and Winthrop College, the head of the Department of Political Science and History at South Carolina State College and their successors; the chairman of the U.S. Constitution Bicentennial Commission; and five non-ex officio members appointed by the Governor upon recommendation as provided by statute. Due to academic or other responsibilities, several members have difficulty attending meetings.

The laws relative to the Commission do not contain any authority for a Commission member to appoint someone to attend a meeting or vote in his stead. This Office has advised on numerous occasions that without express authorization therefor, such power may not be delegated. See Ops. Atty. Gen. dated June 13, 1967; May 10, 1984; July 27, 1967; January 21, 1972; April 5, 1972; August 9, 1976; January 15, 1979; and May 6, 1986 (copies of all enclosed). Therefore, because no statute has authorized either the ex officio or non-ex officio members to send someone in their stead to meetings or to vote at such a meeting, it must be concluded that such may not be done.

We trust that the foregoing has adequately responded to your inquiries. Please do not hesitate to contact this Office if anything additional should be required.

Mr. William L. McDowell, Jr.  
Page 3  
May 12, 1987

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/rhm

Enclosures

cc: Jane M. Johnson  
Assistant Attorney General

REVIEWED AND APPROVED BY:

*Robert D. Cook /PDP*  
Robert D. Cook  
Executive Assistant for Opinions