

1984 WL 249967 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1984

*1 The Honorable Paul W. Derrick
Member
House of Representatives
434-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Derrick:

By your letter of July 30, 1984, to Attorney General Medlock, you have described a situation in which the chairman of a county Department of Social Services board of directors voted in the election for the new board chairman in contravention of a portion of the board's bylaws permitting him to vote only to break a tie vote. You have asked whether, if the chairman's vote was not valid, the election is invalidated, or whether the election would stand as it would have resulted had the chairman's vote not been counted.

Because this Office is not empowered to make factual determinations, as only a court would be so empowered, we will provide you with the provisions of law applicable to the situation described by you. The actual resolution of the matter must be handled by the board of directors itself.

Chapter 3 of Title 43, Code of Laws of South Carolina (1976 and 1983 Cum. Supp.), provides for county Departments of Social Services and boards of trustees. Section 43-3-10 provides for the creation and membership of the boards of trustees in each county. Section 43-3-30 provides that

[t]he members of the respective county boards shall elect one of their members as chairman. Each county board shall meet not less than once a month on regular dates fixed by it unless the State Department [of Social Services] shall designate other regular dates for the various county board meetings. A simple majority of the members shall constitute a quorum and may decide all matters. Each county board may adopt its own rules of procedure unless the State Department shall promulgate uniform rules for all county boards to observe.

The State Department has adopted uniform rules for the county boards. In the State Department's Manual of Administration, Volume I, Part B, Section 225, it is stated: 'Each county board shall follow the uniform rules of procedure promulgated by the State Department and shall conduct business in conformity with the bylaws established by the State Department . . .'

The question being voted upon was the election of the chairman for that particular county board of directors. The Administrative Manual above-cited also provides the following:

The majority members of the respective county boards present and voting shall elect one of their members as chairperson and another as vice-chairperson. The election shall be held bi-annually at the June board meeting of even-numbered years. The newly elected officers shall assume responsibilities at the July board meeting. Results of the election shall be reflected in the board minutes.

Further, the county board of directors operates pursuant to a uniform set of bylaws established by the State Department. Article V of the bylaws, entitled 'Officers,' provides the following:

Section 1—The Officers of County Boards of Social Services shall be the Chairperson and a Vice-Chairperson to be elected bi-annually on even-numbered years at the June meeting.

*2 Section 2—The Officers shall be elected by a simple majority vote of the respective members.

Section 3—Election of officers shall be by secret ballot. ¹

Section 4—Newly elected officers shall assume responsibility at the July board meeting.

Section 5—The chairperson of county boards will vote only in instances of a tie.

In construing statutes or such governing rules and regulations, the primary object is to ascertain and give effect to the intent of the enacting body. Cf., [Bankers Trust of South Carolina v. Bruce](#), 275 S.C. 35, 267 S.E.2d 424 (1980). Furthermore, words used in a statute or rule are to be given their plain and ordinary meaning, absent ambiguity. [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E.2d 148 (1980). Applying these basic rules of statutory construction to the statutes and rules referenced above, it is apparent that the chairperson of a county board of directors is empowered to vote only in instances of a tie vote. See also 67A C.J.S., [Parliamentary Law](#), § 8(c).

If one not entitled to vote does cast a ballot, the next question is whether that vote, if identifiable, is merely not tabulated, or whether the entire election is invalidated. Robert's Rules of Order-Newly Revised (1970) provides the following:

[I]f one or more ballots are identifiable as cast by persons not entitled to vote, and it can be established that there are no other such ballots, these ballots are excluded in determining the number of votes cast for purposes of computing the majority. If there is evidence that any unidentifiable ballots were cast by persons not entitled to vote, and if there is any possibility that such ballots might affect the result, the entire ballot vote is null and void and a new ballot vote must be taken . . .

Section 44, Page 351. Thus, according to Robert's Rules, the course of action to be taken when an illegal ballot has been cast basically turns upon whether the voter is identifiable or not. If the voter of the ballot is identifiable and the vote might change the outcome of the election, then a new ballot vote would be taken.

Robert's Rules provide no guidelines as to procedures to be used in identifying voters of a particular ballot. Instead, Section 44 at Page 345 provides that '[u]nless the bylaws provide otherwise, the assembly [here, the board] itself is the judge of all questions arising which are incidental to the voting or the counting of the votes.' Since it appears that this situation is not provided for in the county board's bylaws, the county board of directors will determine whether a voter is identifiable or not.

A question has arisen as to the propriety of a member of the board voting for himself or herself for the position of chairperson. The Administrative Manual and Section 43-3-30 cited previously provide that one of the members of the board is to be elected chairperson and another, vice-chairperson. In those instances when the presiding officer must be selected from the membership of the voting body, it has been deemed proper to vote for oneself. Robert's Rules, Section 44 at page 345, provides that '[t]he rule on abstaining from voting on a question of direct personal interest does not mean that a member is prevented from voting for himself for an office or other position to which members generally are eligible . . .'. See also [Kurz v. Genova](#), 135 N.J. Super. 496, 343 A.2d 775 (1975); [Skarbnik v. Spina](#), 125 N.J. Super. 87, 308 A.2d 390 (1973), citing Robert's Rules, Section 44. However, where the position in question is not necessarily filled from the membership of the body voting to fill the position, one may not vote for oneself, since an individual may not appoint himself to a public office. See [Raynovich v. Romanus](#), 450 Pa. 391, 299 A.2d 301 (1973); [Township Committee of Hazlett v. Morales](#), 119 N.J. Super. 29, 289 A.2d 563 (1972). Hence, in this instance, it would be proper for a member to vote for himself or herself for the position of chairperson, if the member is otherwise permitted to vote.

*3 In conclusion, it is the opinion of this Office that the chairperson of a county board of trustees may not vote except to break a tie vote. Whether the entire vote is invalidated or only the chairperson's vote is not tabulated depends upon whether the chairperson's vote is identifiable. The board of directors itself is the judge of such identifiability. It should be noted that this opinion is consistent with an opinion rendered by Stanley H. Kohn, General Counsel for the South Carolina Department of Social Services on July 17, 1984 in this matter. This opinion may not be construed as finding as a fact that the chairperson's vote is identifiable or not.

Please advise this Office if clarification or additional information should be needed. Otherwise, we trust that we have satisfactorily responded to your inquiry.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 This office does not comment herein on the procedure of voting by secret ballot but would point out that a county board of directors would be a public body subject to the Freedom of Information Act, [Section 30-4-10, et seq. of the Code \(1983 Cum. Supp.\)](#). See [Ops. Atty. Gen.](#) dated January 17, 1984 and April 24, 1984.

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