



ALAN WILSON
ATTORNEY GENERAL

May 07, 2025

Mary C. McCormac
Attorney at Law, LLC
Post Office Box 1535
Clemson, SC 29633

Dear Ms. McCormac:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

Please accept this letter as a request for an opinion on behalf of the Town of Six Mile.

S.C. Code §6-29-350(A) provides that planning commissions shall be made up of no less than 5 and no more than 12 members. The Six mile Town Council has created 5 seats for its planning commission. Recently a planning commission member resigned. S.C. Code §6-29-350(B) provides that in the event of a vacancy, the unexpired term of that vacancy must be filled in the same manner as the original appointments to the commission. It is fairly common that volunteer members of boards and commissions resign. This may happen for a variety of reasons - health, relocation, work demands, etc. As a practical matter, it can take some time to locate and appoint a qualified individual able and willing to serve, particularly in smaller municipalities. See, S.C. Code. §6-29-350(C).

The Six Mile Planning Commission has met at least twice since the resignation, and after lengthy discussions over whether it could conduct business with 4 members, decided at both meetings that it cannot have a meeting until a fifth member is appointed by Council. In the planning commission chair's words:

[T]he decision not to conduct a meeting was made pursuant to Section 6-29-350 of the South Carolina Code of Laws. The statute requires every local planning commission to have **at least five appointed members**. This is not a suggestion; it's a statutory requirement for the commission to be legally constituted. Without

that minimum, we lack authority to meet, vote, or make recommendations to Council - regardless of how spirited our conversations might be. (Emphasis in original). Further the chair noted:

The record of our last two scheduled meetings reflects this clearly. While quorum rules are typically governed by local bylaws, they only become relevant after the commission exists in the eyes of the law - which, again, requires five appointed members. Without that, there's no legal body, and thus, no official meeting to be held (and certainly no FOIA-triggering action to be memorialized in minutes). Although a few of us were present and engaged in informal discussion - as citizens, not commissioners - the Planning Commission was not legally constituted at the time. Accordingly, **no official meeting occurred, and no formal minutes were recorded**. Our documentation reflects this, just as it should.

(Emphasis in original).

In accordance with this interpretation, the commission has refused to conduct business until a fifth member is appointed, and has refused to prepare minutes of the two meetings. In light of the disruption to Town planning matters resulting from the planning commission refusing to conduct business until the Council is able to appoint a fifth member:

1. May a planning commission or other municipal board meet and consider business following the resignation of a member, as long as a quorum is present?

[As far as a quorum, Section 906.16 of the Six Mile Zoning Ordinance states that a "[s]imple majority of the number of members shall constitute a quorum of this Commission for transacting business and taking official action." This echoes the simple majority language set forth in S.C. Code §30-4-20(e).]

2. In light of prior opinions and case law relating to whether a resignation is effective until a replacement is qualified and appointed, would a resigning appointed, member of the office of planning commissioner be considered to continue to serve, whether *de jure* or *de facto*, until replaced?

(See, S.C. Attorney Ops. dated July 2, 2012; January 29, 2007; August 7, 1996; Bradford v. Byrnes, 221 S.C. 255, 262, 70 S.E. 228 (1952) ("[I]n the absence of pertinent statutory or constitutional provision, public offices [sic] hold over *de facto* until their successors are appointed or elected and qualify."))

3. May a municipal council require that a board or commission continue to meet and conduct business after a member resignation, as long as it continues to have a quorum present at its meetings?

4. Would the meetings of a quorum of a board or commission at published dates and times for meetings, consisting of in depth discussions about South Carolina law, as described above, along with making decisions regarding the ability to meet or conduct business until an additional member is appointed, constitute meetings under S.C. Code § 30-4-20(d)?

(“‘Meeting’ means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.”)?

5. If so, should minutes be prepared for those meetings in accordance with S.C. Code §§6-29-360(B) and 30-4-90(a)?

Law/Analysis

1. May a planning commission or other municipal board meet and consider business following the resignation of a member, as long as a quorum is present?

It is this Office’s opinion that a local planning commission that has been established with five members may hold meetings and conduct business with a quorum, a simple majority, of those members. Such a commission may hold a meeting with as few as three members present. As your letter states, section 6-29-350(A) permits local planning commissions “serving not more than two political jurisdictions [to be formed with] not ... less than five nor more than twelve members.” While the statute does not permit less than five members, that does not mean a commission cannot call a meeting with less than five members present.

This Office previously opined on the county boards of voter registration and elections which are similarly structured bodies that can be established with a range of five to nine members. Op. S.C. Att’y Gen., 2023 WL 5829051 (August 30, 2023). Therein, we discussed why the public bodies are permitted to meet and conduct their business with less than the total membership present.

In Williams v. Benet, 35 S.C. 150, 14 S.E. 311 (1892), the South Carolina Supreme Court expressed that the purpose of a quorum requirement is to allow a public body to conduct its business with less than the entire membership present.

The very purpose in providing for the transaction of business of any given body or tribunal by a quorum is to prevent the stoppage of the public business when a portion of the whole membership may, from any cause, fail to attend at the time appointed; and whether such

failure results from death or some temporary cause cannot affect the question.

14 S.E. at 312.; see also State v. McMillian, 349 S.C. 17, 20, 561 S.E.2d 602, 603 (2002) (“This Court has recognized that no valid act can be done in the absence of a quorum.”). The Court also held that the common law requires the presence of a simple majority of the membership of a public body to constitute a quorum.

In the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum. A member who recuses himself or is disqualified to participate in a matter due to a conflict of interest, bias, or other good cause may not be counted for purposes of a quorum at the meeting where the board acts upon the matter.

Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432,453, 511 S.E.2d 48,59 (1998) (citations omitted). ... When five members are appointed, the statutory minimum required by S.C. Code § 7-5-10(A)(l), the minimum number of members who must be present to constitute quorum and validly conduct such a board’s business is three. See State v. McMillian, 349 S.C. 17, 20, 561 S.E.2d 602, 603-04 (2002) (“This Court has recognized that no valid act can be done in the absence of a quorum.”).

Id. at 8-9 (footnote omitted). Here, Article 1, Chapter 29 of Title 6 concerning the creation of local planning commissions does not vary the quorum requirement, so such commissions’ quorum requirements are “a simple majority of the constituent membership.” S.C. Code § 30-4-20(e). Therefore, when a local planning commission is formed with five members, the minimum number of members who must be present to constitute a quorum and validly conduct business is three.

2. In light of prior opinions and case law relating to whether a resignation is effective until a replacement is qualified and appointed, would a resigning appointed, member of the office of planning commissioner be considered to continue to serve, whether *de jure* or *de facto*, until replaced?

Section 6-29-350(B) states members of a local planning commission “serve until their successors are appointed and qualified.”

The law distinguishes somewhat between an officer who holds over by statute and one holding over where no statute providing for holdover status is applicable. In Op. S.C. Att'y Gen., Op. No. 84-129 (November 5, 1984), we noted that “where a statute provides that an officer hold over until a successor is selected and qualifies, such period is as much a part of the incumbent’s term of office as the fixed constitutional or statutory period.” A person who by statute holds over until a successor is elected or appointed and qualifies is, in other words, a *de jure* officer.

Op. S.C. Att’y Gen., 2003 WL 21471510, at 2 (June 5, 2003). Therefore, a commission member continues to serve in a *de jure* capacity even when they hold over beyond their appointed term.

In Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415 (1964), the South Carolina Supreme Court held that when a statute requires an officer to serve until his successor is qualified resignations have no effect, and the commissioners were required to continue in office.

The foregoing statute provides that officers qualified thereunder ‘shall continue in office until their successors are appointed and qualified.’ The legislative intent to make provision against a situation where there would be no qualified commissioners to conduct and hold elections is clear. A proper interpretation of the statute makes it mandatory on the part of election commissioners to serve until their successors are appointed and qualify. Therefore the attempted resignat[ions] of these respondents was of no effect and their tenure in office, together with the duties and responsibilities thereof, must be held to continue, since no successors have qualified. This is in accord with the general rule that a public officer does not cease to be such even when his resignation is accepted, but continues in office until a successor is qualified where the statute or Constitution so provides.

Id. at 34, 138 S.E.2d at 417. Apply the holding in Rogers to the present scenario, the member who resigned their position on the local planning commission would still be considered to hold office until a successor is qualified.

3. May a municipal council require that a board or commission continue to meet and conduct business after a member resignation, as long as it continues to have a quorum present at its meetings?

A court can issue a writ of mandamus requiring commission members to carry out the duties of their office as imposed by law. In Rogers v. Coleman, the Court held that commission members were “clothed with the authority and responsibility to perform the duties imposed by law,” and even “[i]n the event of the total disability of any one of said Commissioners, the remaining members shall perform such duties.” Id. at 35.

4. Would the meetings of a quorum of a board or commission at published dates and times for meetings, consisting of in depth discussions about South Carolina law, as described above, along with making decisions regarding the ability to meet or conduct business until an additional member is appointed, constitute meetings under S.C. Code § 30-4-20(d)?

The convening of a quorum of the membership of a public body “to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power,” is a meeting according to the South Carolina Freedom of Information Act. S.C. Code § 30-4-20(d). The scenario posed appears to describe the membership discussing their authority to meet to perform the duties of their offices. Certainly, the elements of convening a quorum and discussion are present. The remaining question is whether the topic discussed is “a matter over which the public body has supervision, control, jurisdiction or advisory power.” *Id.* A court would likely hold a discussion of whether the law authorizes the body to meet pertains to the public body’s jurisdiction. While the determination ultimately will depend on the facts in a given case, out of an abundance of caution, such a gathering should be treated as a “meeting” under the S.C. FOIA.

5. If so, should minutes be prepared for those meetings in accordance with S.C. Code §§6-29-360(B) and 30-4-90(a)?

Assuming the above scenario is found to be “meeting” under the S.C. FOIA, the commission would be required to record minutes of the meeting. *See* S.C. Code § 30-4-90(a) (“All public bodies shall keep written minutes of all of their public meetings.”); S.C. Code §§6-29-360(B) (“The commission shall ... keep a record of its resolutions, findings, and determinations, which record must be a public record.”).

Conclusion

As is discussed more fully above, it is this Office’s opinion that a local planning commission that has been established with five members may hold meetings and conduct business with a quorum, a simple majority, of those members. Such a commission may hold a meeting with as few as three members present.

Sincerely,



Matthew Houck

Assistant Attorney General

Mary C. McCormac

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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook

Solicitor General