



ALAN WILSON  
ATTORNEY GENERAL

January 19, 2023

The Honorable Annie E. McDaniel  
Member  
South Carolina House of Representatives  
P.O. Box 11867  
Columbia, SC 29211-1867

Dear Representative McDaniel:

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

I have learned that the Mitford Rural Water District Board of Fairfield and Chester Counties believes that it, and not our Governor, selects the members of its Board. My research has turned up this provision in the South Carolina Code of Laws:

**SECTION 6-13-630. Creation and membership of Mitford Rural Water District Board of Fairfield and Chester Counties.**

The district shall be operated and managed by a board of directors to be known as the Mitford Rural Water District Board of Fairfield and Chester Counties which shall constitute the governing body of the district. The board shall consist of five resident electors of the area who shall be appointed by the Governor, upon the recommendation of a majority of those persons attending a meeting of residents of the area held pursuant to at least one week's notice in a local newspaper giving the time and place of the meeting. The chairman and secretary of the meeting shall certify the names of those recommended to the Governor. The original appointments shall be for a term of two years for two appointees, for four years

for two appointees, and for six years for one appointee. All terms after the initial appointments shall be for six years. All appointees shall hold office until their successors shall have been appointed and qualified. The initial terms of office shall begin as of April 12, 1965. Any vacancy shall be filled in like manner as the original appointment for the unexpired portion of the term. Immediately after appointment, the board shall meet and organize by the election of one of its members as chairman, one as vice chairman, one as secretary and one as treasurer. The offices of the secretary and treasurer may be combined in the discretion of the board.

As a result of this situation, confusion has developed around how to fill vacancies on this Board and what can be one with purported Board members who have not been seated pursuant to this statutorily-based method. Therefore, I ask:

1. Based on your review of this, and any other applicable Code Sections, who actually appoints these Board members?
2. In your opinion, do you see any method where this Board, and no one else, can name the members of its Board?
3. In your opinion, must the naming of these Board members by the Governor come after a majority vote by the residents served by the Mitford Rural Water District Board of Fairfield and Chester Counties?
4. Does only the Governor have this appointment power under S.C. Code § 6-13-630?
5. If only our Governor has the power to appoint this Board membership under S.C. Code § 6-13-630, how can the Board members not selected by this statutory method best be removed from office?

#### **Law/Analysis**

Given that your letter requests an expedited response, this opinion should be read in that context. It is this Office's opinion that a court would hold the members of the Mitford Rural Water District Board of Fairfield and Chester Counties ("Mitford Rural Water District") are appointed by the Governor, "upon the recommendation of a majority of those persons attending a meeting of residents of the area." S.C. Code § 6-13-630. Mitford Rural Water District was created by the General Assembly by Act 192 of 1965. Section 3 of Act 192 established that the District would be operated and managed by a Board of Directors. Therein, it specified that board members would be appointed by the Governor, "upon the recommendation of a majority of those persons attending a meeting of residents of the area." 1965 Act No. 192, § 3. Act 192 was later codified in the 1976

Code of Laws as S.C. Code § 6-13-630. As there have been no amendments to the statute, this method of selecting board members has consistently applied from the District's inception.

This Office was not provided a specific source of authority that Board relies upon to select its own the members. We speculate that there may be confusion arising from directives in other statutes that address special purpose or public service districts generally. For instance, S.C. Code § 6-11-80 addresses the organization of and vacancies on such a commission. In relevant part, it states, "In the event of any vacancy on the commission the remaining members of the commission shall elect a commissioner to fill the unexpired term." *Id.* A court would likely hold using this method of filing vacancies is invalid because it is inconsistent with the provisions of S.C. Code § 6-13-630 which is specific to the Mitford Rural Water District. When two statutes are found incapable of being reasonably reconciled, the choice of which statute prevails is guided by the following principles:

[W]here two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute. Hodges v. Rainey, *id.* at 85, 533 S.E.2d at 581; Stone v. City of Orangeburg, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994).

Furthermore, "[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." Spectre, LLC v. S.C. Dept. of Health and Env'tl. Control, 386 S.C. 357, 688 S.E.2d 844, 851 (2010). Specific statutes are not to be considered repealed by a later general statute unless there is a direct reference to the earlier statute or the intent of the legislature to do so is explicitly implied.

Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468-69 (2010). Here, S.C. Code § 6-13-630 is both more specific to the Mitford Rural Water District and was enacted more recently than S.C. Code § 6-11-80.<sup>1</sup>

Moreover, in 1988, the General Assembly enacted S.C. Code § 8-1-150 which provides a different method of filing vacancies on the governing body of special purpose or public service districts.

Whenever a vacancy occurs in the membership of the governing body of a special purpose district or public service district, and the duties of the governing body are

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<sup>1</sup> S.C. Code § 6-11-80 was originally adopted in 1934. See 1934 (38) 1292.

proscribed by law, and there is no provision for filling the vacancy, it must be filled in the same manner of original appointment or election for the remainder of the unexpired term.

Id. Section 8-1-150 is, again, more recently enacted and therefore its terms would also likely prevail over those in section 6-11-80 if there is a conflict.<sup>2</sup> In the case of vacancies on the Mitford Rural Water District, however, a provision directs how to fill vacancies that is specific to this board. “Any vacancy shall be filled in like manner as the original appointment for the unexpired portion of the term.” S.C. Code § 6-13-630. As discussed above, those original appointments are made by the Governor upon the recommendation of a majority of those persons attending a meeting of residents of the area.

This opinion makes no determinations regarding any specific members of the Mitford Rural Water District as those would require factual determinations which are beyond the scope of this Office’s opinions. See Op. S.C. Att’y Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.”). Yet, if an interested party sought to challenge whether a board member was properly appointed, they could file a *quo warranto* action or file an action under the Declaratory Judgment Act. “A *quo warranto* action is rooted in the common law writ designed to test whether a person exercising power is legally entitled to do so. It is an ancient prerogative right through which the state acts to protect itself and the good of the public generally...” State ex rel. Condon v. City of Columbia, 339 S.C. 8, 14, 528 S.E.2d 408, 411 (2000).

When a party has a question regarding its rights or obligations under the law, the party may bring an action under the Declaratory Judgments Act to have the question resolved by a court. The Declaratory Judgments Act provides, “Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20 (2005). It further provides, “Any person ... whose rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30 (2005).

S.C. Lottery Comm'n v. Glassmeyer, 433 S.C. 244, 250, 857 S.E.2d 889, 892–93 (2021) (footnotes omitted). Both actions authorize a court to determine whether a board member was properly appointed and to call for an election to fill an improperly appointed member’s seat.

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<sup>2</sup> See Op. S.C. Att’y Gen., 1998 WL 196483 (March 26, 1998) (concluding the provisions of S.C. Code § 8-1-150 applied to fill a vacancy on the Board of Fire Control for the Duncan Chapel Fire District).

This Office has previously opined regarding the validity of actions taken by improperly appointed individuals during their service on a board or commission.

It is well recognized under the general law that “in order to hold a public office, one must be eligible and possess the qualifications prescribed by law, and the appointment to office of a person who is ineligible or unqualified gives him no right to hold the office.” Op. S.C. Atty Gen., January 14, 1999. In that same opinion, we noted that the “appointment of an individual not qualified to serve is void and an absolute nullity.” Citing 67 C.J.S., Officers, § 19. This Office has previously stated that if a person is not qualified to hold office when he is appointed and begins to serve, that appointment is ineffective. Op. S.C. Atty. Gen., February 17, 1983.

However, the January 14, 1999 opinion also recognized that “[t]he fact that the appointment is an absolute nullity would not necessarily jeopardize the actions taken by the individual in question during his service on the board or commission.” Just as the situation where the individual holds over beyond his or her statutory term or without statutory authorization to do so, “[i]t is well settled that one who holds office under an appointment giving color of title may be a de facto officer, although the appointment is irregular or invalid.” Id. As the opinion stated, “[t]he acts of a de facto officer are valid and effectual so far as they concern the public or the rights of third parties.”

Op. S.C. Att’y Gen., 2003 WL 21471510 (June 5, 2003). While a court may hold the actions taken by the board, even if some members are improperly seated, are valid, we strongly suggest following the appointment provisions in S.C. Code § 6-13-630 to limit the potential risks of litigation.

### Conclusion

Based on the analysis discussed more fully above, it is this Office’s opinion that a court would hold the members of the Mitford Rural Water District Board of Fairfield and Chester Counties (“Mitford Rural Water District”) are appointed by the Governor, “upon the recommendation of a majority of those persons attending a meeting of residents of the area.” S.C. Code § 6-13-630. If an interested party sought to challenge whether a board member was properly appointed, they could file a *quo warranto* action or file an action under the Declaratory Judgment Act.

Sincerely,



Matthew Houck

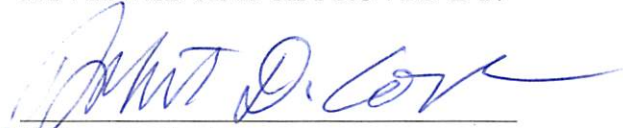
Assistant Attorney General

The Honorable Annie E. McDaniel

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line. The signature is fluid and cursive.

Robert D. Cook  
Solicitor General