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HENRY McMASTER
ATTORNEY GENERAL

May 4, 2006

The Honorable Vida O. Miller
Member House of Representatives
P.O. Box 3157
Pawleys Island, SC 29585

Dear Representative Miller:

We received your letter concerning bylaws adopted by the Georgetown County Board of Elections and Registration (the "Board"). From your letter, we understand the Board recently changed the provision in its bylaws pertaining to the election of the Board's officers. Attached to your letter, we found both a copy of the old and the revised bylaws. The Board's previous bylaws called for the election of its officers "by majority vote of the members of the Board, for a two year term at the first meeting of the Board in each year following a general election." Currently, the Board's bylaws read: "The Vice-Chairman and other officers shall be elected, by majority vote of the members of the Board, for two year terms at the April meeting of the Board in each year following a general election." You informed us that the Board's members, just after their appointment to the Board, held an election for officers and then made the above revisions to the bylaws. You indicated in a telephone conference with our Office that the Board is intending to hold another election this month. Thus, you ask: "If officers were elected in accordance with the old bylaws in March of 2005, following the general election and another election of officers was held before April of 2007, would that be a valid election of officers?"

As you mentioned, it is the Board's bylaws that provide for the election of the Board's Officers (other than Chairman, whose appointment is governed by statute). Thus, we look the legal authority governing bylaws. We addressed a governing body's authority with respect to its bylaws in an opinion dated April 14, 1986, involving the Greenville Transit Authority. Quoting State ex rel. Coleman v. Lewis, 181 S.C. 10, 22, 86 S.E. 625, 630 (1936) we stated:

"[t]he power to make rules is not one when once exercised is exhausted. It is a continuous power, always subject to be exercised

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by the [legislative body], and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.”

Further, we added:

It has also been stated that a “rule of parliamentary law is a rule created and adopted by the legislative or deliberative body it is intended to govern [It] is subject to revocation or modification at the pleasure of the body creating it

The rules of procedure passed by one legislative body are not binding on a subsequent legislative body

Rules of procedure are always within the control of a majority of a deliberative body and may be change at any time by majority vote”

Id. (quoting 67 C.J.S. Parliamentary Law §§ 2, 4, 8). Additionally, we concluded ““rules of procedure are always within the control of the majority and may be changed at anytime by a majority vote.”” Id. (quoting State ex rel. Kiel v. Riechmann, 142 S.W. 304, 310 (Mo. 1911)).

The principles presented in our 1986 opinion are further supported by Manigault v. Springs, 199 U.S. 473 (1905), in which the United States Supreme Court addressed whether the South Carolina Legislature acted illegally when it refused to comply with a statute requiring the Legislature to follow certain procedures when enacting legislation.

As this is not a constitutional provision, but a general law enacted by the legislature, it may be repealed, amended, or disregarded by the legislature which enacted it. This law was doubtless intended as a guide to persons desiring to petition the legislature for special privileges, and it would be a good answer to any petition for the granting of such privileges that the required notice had not been given; but it is not binding upon any subsequent legislature, nor does a noncompliance with it impair or nullify the provisions of an act passed without the requirement of such notice.

Id. at 487.

Furthermore, in an opinion of this Office, we applied the holding in Manigault to a situation in which a city council previously adopted a provision in its city code requiring the city manager to

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submit a budget to the council within a certain time frame. Op. S.C. Atty. Gen., October 24, 1997. Based on Manigault, we concluded "if a court were to examine this issue, it would likely conclude that a sitting council would not be bound by time restraints placed on it by the ordinance passed by a prior council and would be capable of determining the time in which the city manager should prepare and submit the budget estimate to the sitting council." Id.

In a recent opinion of this Office, we specifically discussed the Board's authority to change or adopt new bylaws and its authority to elect officers. Op. S.C. Atty. Gen., February 6, 2006. With regard to the Board's authority, we stated:

As to your questions of whether the Board is authorized to change or adopt new bylaws and elect new officers, as you have stated, apparently there are no specific provisions referencing the changing of such bylaws or electing officers, other than chairman [in the enabling legislation creating the Board]. However, generally, a board or commission has implied authority to conduct business, which would include the adoption of bylaws and the election of officers, as such matters are reasonably necessary for the work of a board or commission. As stated in a prior opinion of this Office dated August 1, 1961, "[i]n addition to the express powers which . . . (a) . . . board or commission might have, these governmental bodies have such implied powers as are necessarily inferred or reasonably necessary to make effective the express powers granted to them." See also, 81A C.J.S. States, §§ 224 and 249 (stating boards and commissions have such powers as have been delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed upon them). Consistent with such, the Board has implied authority to change or adopt new bylaws and to elect officers except for the office of chairman, which is chosen by the legislative delegation.

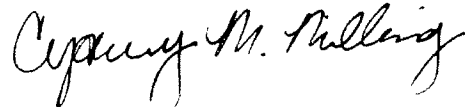
Id.

In analyzing the issue presented in your letter, we again reviewed the Board's enabling legislation and found no reference to the adoption of bylaws by the Board or to the election of the Board's officers, other than the Chairman is to be appointed by the legislative delegation. 1994 S.C. Acts 6046. Thus, we presume the Board acted under its implied authority to conduct its business in adopting bylaws and electing officers. Although one would expect a board to act in accordance with its own bylaws, in this instance it may not be legally required to do so. In the case of the Board, it is not required to adopt bylaws, moreover enforce such bylaws. In addition, based on the law cited

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above, the Board may amend, repeal or disregard such bylaws at its pleasure. Accordingly, the fact that the Board chooses to ignore its bylaws and hold an election of its officers at time other than that proscribed in the bylaws does not per se invalidate the election of such officers.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General