



ALAN WILSON
ATTORNEY GENERAL

November 18, 2013

The Honorable Harvey S. Peeler, Jr.
Senatorial District No. 14
213 Gressette Senate Office Building
Columbia, SC 29202

Dear Senator Peeler:

By your letter dated October 16, 2013, you have asked for the opinion of this Office regarding a seat on the Francis Marion University ("the University") Board of Trustees ("the Board").

Per your letter you explain, "[o]n May 1, 2013, the General Assembly held elections for ten (10) seats on the Francis Marion University Board of Trustees. At the time of the election, the at-large [S]eat [Nine] had one candidate. That candidate was not elected and according to the Clerk of the Senate and Clerk of the House of Representatives the seat remains vacant." Continuing, you explain that despite the fact both the Clerk of the Senate and the Clerk of the House of Representatives believe Seat Nine to be vacant, the University "continues to say that Timothy F. Norwood is a board member," and lists Mr. Norwood as "occupying Seat Nine on the Board."

Additionally your letter indicates that Mr. Norwood "held the at-large Seat Fourteen," that his "term on the Board expired in 2012," and explain that "[b]ecause of the reorganization [which took place pursuant to Act 176 of 2012, Section 13] all board members were in holdover status until the May 1, 2013 election by the General Assembly." You also tell us Mr. Norwood's former seat, Seat Fourteen was filled, pursuant to Act 176 of 2012, Section 13, by the member from former Seat Seven. Finally, you state "Mr. Norwood did not file to run for any seat on the Francis Marion Board."

In light of these facts, you ask whether Mr. Norwood "has been serving on the Board contrary to state law." As explained below, we believe, that based on the facts as you have presented them, there is no legal basis for the University's claim that Norwood serves in Seat Nine of the Board.

Law

As you mentioned above, the General Assembly, through Act 176 of 2012, reorganized, among other things, the University's Board as a result of the creation of the Seventh Congressional District. According to the legislative title of Act 176, Section 59-133-10 of the Code was amended, via Section 13 of the Act, "so as to reduce the number of board members for each congressional district from two to one, to add a member to be appointed from the Seventh Congressional District, to move five trustees to newly created at-large seats, and to adjust the board member seat numbers accordingly." 2012 S.C. Acts, 119 Legis. Sess., Act No. 176 (Legis. title).

Consistent with the intent mentioned in the legislative title, the General Assembly amended Section 59-133-10 so that reorganized "Seats One through Seven" would correspond to the number of their respective congressional district, while reorganized "Seats Eight through Fifteen" would become at-large seats. Specifically, the member from former Seat One was to remain in reorganized Seat One, while the members from former Seats Three, Five, Seven, Nine, Eleven, Thirteen and Fifteen were each transferred to reorganized seats on the Board. See S.C. Code Ann. § 59-133-10 (Supp. 2012) ("Effective July 1, 2012, the member from former Seat One remains in Seat One, the member from former Seat Three is transferred to Seat Twelve, the member from former Seat Five is transferred to Seat Thirteen, the member from former Seat Seven is transferred to Seat Fourteen, the member from former Seat Nine is transferred to Seat Five, the member from former Seat Eleven is transferred to Seat Six, the member from former Seat Thirteen is transferred to Seat Eight, and the member from former seat Fifteen is transferred to Seat Ten."). The results of this reorganization, consistent with the legislative title, created five new at-large positions on the Board, and further stated the terms for the reorganized seats—Seats One, Five, Six, Eight, Ten, Twelve, Thirteen and Fourteen—would expire on June 30, 2014. See S.C. Code Ann. § 59-133-10 (explaining the terms of the members who were transferred under the statute are scheduled to expire on June 30, 2014).

In addition to these changes, Section 13 of Act 176 also amended Section 59-133-10 so as to require elections for Seats Two, Three, Four, Seven, Nine, Eleven and Fifteen, "by the General Assembly in 2012 for a term that expires on June 30, 2016." However, Section 19 of the Act further explained, "[i]n the event that elections for incumbent university board of trustees' seats whose terms are expiring this year are not held prior to June 30, 2012, current board members will retain their seats until the General Assembly reconvenes and hold elections." 2012 S.C. Acts, 119 Legis. Sess., Act No. 176, § 19. Thus, Section 19 of the Act, for purposes of Section 59-133-10, operated so as to permit incumbents with terms expiring in 2012 to holdover, in their current seat on the board, in the event the legislature failed to hold elections in 2012.

Analysis

As we indicated above, we believe that despite the University's assertion to the contrary, our review of the applicable law shows Mr. Norwood has no legal basis for occupying Seat Nine. This is so for two reasons. First, the reorganized Seat Nine is vacant because it is a new office meaning there can be no holdover candidate; and second, the only seat Mr. Norwood ever had any legal claim to, former Seat Fourteen, was extinguished once the successor to former Seat Seven was elected by the General Assembly during the May 1, 2013 election.

In your letter, you indicated that the University is relying upon a previous opinion of this Office, Op. S.C. Atty. Gen., 2013 WL 2450881 (May 29, 2013) to support its claim that Mr. Norwood occupies Seat Nine. Assuming this to be true, we respectfully disagree with such an assertion. Specifically, because the legislative title indicates that Act 176 of 2012 amended Section 59-133-10 to, among other things, "*move five trustees to newly created at-large seats*" we believe the reorganized Seat Nine, a seat which was previously a congressional district seat but is now an at-large seat, is a new office and our previous opinion, which dealt with holdover law, is inapplicable in this instance. As such, assuming that your letter is correct in stating that Mr. Norwood never filed for any seat on the Board and no successor was elected to the reorganized Seat Nine during the May 1, 2013 election, it is the opinion of this Office that the newly-created Seat Nine, consistent with the Clerk of both the House and the Senate, is vacant.

We further believe that at this time, Mr. Norwood no longer has a legal claim to any seat on the Board. In particular, it is the opinion of this Office that following the May 1, 2013 election, Mr. Norwood's term and subsequent holdover status, which was for former Seat Fourteen rather than Seat Nine, was terminated once L. Franklin Elmore, who occupied former Seat Seven, was transferred to the newly-created Seat Fourteen pursuant to the statute. See S.C. Code Ann. § 59-133-10 ("[T]he member from former Seat Seven is transferred to Seat Fourteen[.]"). In other words, because Mr. Norwood's term had already expired and he only held Seat Fourteen by virtue of Section 19's holdover provision, his holdover status was terminated when Mr. Elmore was released from his former seat by the election of his successor, and was transferred, under the terms of the statute, to reorganized Seat Fourteen. See 2012 S.C. Acts, 119 Legis. Sess., Act No. 176, § 19 (explaining that if the Board does not hold elections before June 30, 2012 current board members will retain their seats until the General Assembly reconvenes and elections are conducted). Following this point, Mr. Norwood, who according to your letter, failed to file for election to any seat on the Board, no longer had a legal claim to any seat on the Board. Accordingly, it is the position of this Office that the University has no legal basis to support its assertion that Mr. Norwood remains on the Board.

The Honorable Harvey S. Peeler, Jr.
Page 4
November 18, 2013

Conclusion

In conclusion, it is our opinion that Mr. Norwood has no legal basis for occupying Seat Nine on the Board. The intent of the General Assembly in amending Section 59-133-10 was to create five *new* at-large seats on the Board, one of which was the reorganized Seat Nine, and as such, holdover law is simply inapplicable in this instance resulting in Seat Nine remaining vacant. Furthermore, additional review reveals the only seat Mr. Norwood ever had any legal claim to, former Seat Fourteen, was extinguished once the successor to former Seat Seven was elected by the General Assembly during the May 1, 2013 election. Therefore, since Mr. Norwood's term had expired and he failed to file for a new spot on the Board, the assertion that Mr. Norwood occupies any seat on the Board, much less Seat Nine, lacks any legal support. Accordingly, it is the opinion of this Office that Mr. Norwood has never had a legal claim to Seat Nine, and at this juncture, no longer has legal claim to any seat on the University's Board.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General