



ALAN WILSON  
ATTORNEY GENERAL

July 12, 2019

The Honorable Stephen K. Benjamin, Mayor  
City of Columbia  
P.O. Box 147  
Columbia, SC 29217

Dear Mayor Benjamin:

You seek our opinion “. . . regarding the meeting of the University of South Carolina Board of Trustees called by Governor McMaster for July 12, 2019.” By way of background, you provide the following information as stated in your letter:

Under the SC Code of Laws Section 59-117-50 (below) this meeting has not been properly noticed.

**SECTION 59-117-50. Meetings of board; quorum.**

The board of trustees shall meet not less frequently than quarterly, the time and place of each such regular meeting to be fixed by the chairman of the board or otherwise as the board of trustees shall provide. If the Governor chooses to serve as an ex officio member of the board, he shall preside at all regular and special meetings of the board of trustees in which he is in attendance. At those meetings at which the Governor is not in attendance the chairman of the board of trustees shall preside and in his absence such member shall preside as the board may select. The Governor of the State (if serving as an ex officio member of the board), the chairman of the board of trustees, and the president of the University shall each have the power to call a special meeting of the board of trustees and fix the time and place thereof. Any five members of the board shall likewise have this power. A majority of the members of the board of trustees shall constitute a quorum for the transaction of all business of the board but not less than a majority vote of the whole board shall be required for the election or removal of a president. It shall be the duty of the president and other officers as well as members of the faculty to attend meetings of the board of trustees when requested to so.

Notice of the time and place of all meetings, both regular and special meetings, of the board of trustees of the University of South Carolina shall be mailed by the secretary or his assistant to each trustee not less than five days before each meeting thereof. (emphasis added.)

1. What is the purpose of the study?  
The purpose of the study is to determine the effect of the use of a computer program on the learning of the English language.

DATE OF BIRTH: 06-09-1978 SEX: M RACE: W HT: 5'10" WT: 170 EYES: BRN HAIR: BLK

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During the year 1911, the following persons were employed in the  
 various departments of the Bureau of the Census, and the number of  
 months each was employed, as follows:

NAME	DEPARTMENT	MONTHS
Mr. J. M. Smith	Chief Clerk	12
Mr. A. B. Jones	Assistant Chief Clerk	12
Mr. C. D. Brown	Chief of Bureau	12
Mr. E. F. Green	Assistant Chief of Bureau	12
Mr. G. H. White	Chief of Division	12
Mr. I. J. Black	Assistant Chief of Division	12
Mr. K. L. Gray	Chief of Section	12
Mr. M. N. Hall	Assistant Chief of Section	12
Mr. O. P. King	Chief of Office	12
Mr. Q. R. Lee	Assistant Chief of Office	12
Mr. S. T. Young	Chief of Unit	12
Mr. U. V. Wright	Assistant Chief of Unit	12
Mr. W. X. Scott	Chief of Detail	12
Mr. Y. Z. Adams	Assistant Chief of Detail	12
Mr. A. B. Baker	Chief of Station	12
Mr. C. D. Carter	Assistant Chief of Station	12
Mr. E. F. Evans	Chief of District	12
Mr. G. H. Fisher	Assistant Chief of District	12
Mr. I. J. Gibson	Chief of Substation	12
Mr. K. L. Hall	Assistant Chief of Substation	12
Mr. M. N. Hill	Chief of Office	12
Mr. O. P. Howell	Assistant Chief of Office	12
Mr. Q. R. Hunt	Chief of Detail	12
Mr. S. T. Ingram	Assistant Chief of Detail	12
Mr. U. V. Jackson	Chief of Station	12
Mr. W. X. Johnson	Assistant Chief of Station	12
Mr. Y. Z. Keith	Chief of District	12
Mr. A. B. Lester	Assistant Chief of District	12
Mr. C. D. Little	Chief of Substation	12
Mr. E. F. Long	Assistant Chief of Substation	12
Mr. G. H. Martin	Chief of Office	12
Mr. I. J. Miller	Assistant Chief of Office	12
Mr. K. L. Moore	Chief of Detail	12
Mr. M. N. Myers	Assistant Chief of Detail	12
Mr. O. P. Nichols	Chief of Station	12
Mr. Q. R. Oliver	Assistant Chief of Station	12
Mr. S. T. Parker	Chief of District	12
Mr. U. V. Quinn	Assistant Chief of District	12
Mr. W. X. Reed	Chief of Substation	12
Mr. Y. Z. Richmond	Assistant Chief of Substation	12
Mr. A. B. Scott	Chief of Office	12
Mr. C. D. Shaw	Assistant Chief of Office	12
Mr. E. F. Smith	Chief of Detail	12
Mr. G. H. Taylor	Assistant Chief of Detail	12
Mr. I. J. Thomas	Chief of Station	12
Mr. K. L. Turner	Assistant Chief of Station	12
Mr. M. N. Vance	Chief of District	12
Mr. O. P. Webb	Assistant Chief of District	12
Mr. Q. R. White	Chief of Substation	12
Mr. S. T. Wilson	Assistant Chief of Substation	12
Mr. U. V. Wood	Chief of Office	12
Mr. W. X. Wright	Assistant Chief of Office	12
Mr. Y. Z. Young	Chief of Detail	12
Mr. A. B. Zachary	Assistant Chief of Detail	12
Mr. C. D. Adams	Chief of Station	12
Mr. E. F. Baker	Assistant Chief of Station	12
Mr. G. H. Carter	Chief of District	12
Mr. I. J. Evans	Assistant Chief of District	12
Mr. K. L. Fisher	Chief of Substation	12
Mr. M. N. Gibson	Assistant Chief of Substation	12
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Mr. S. T. Howell	Chief of Detail	12
Mr. U. V. Hunt	Assistant Chief of Detail	12
Mr. W. X. Ingram	Chief of Station	12
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Mr. W. X. Howell	Assistant Chief of Detail	12
Mr. Y. Z. Hunt	Chief of Station	12
Mr. A. B. Ingram	Assistant Chief of Station	12

1. The Commission has received information that the following individuals have been identified as being involved in the activities of the Communist Party, U.S.A., and its front organizations, and are being considered for removal from the U.S. Navy and U.S. Marine Corps:

It is clear that the notice requirements have not been met under our state law and that this meeting is improperly constituted.

Given the importance of the matters at hand and the urgency of time, I would like your opinion post haste on the legality of this meeting and potential action by the Board of Trustees.

### Law/Analysis

Our Supreme Court has advised that “[w]here the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning.” S.C. Dept. of Highways and Pub. Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986). In Dickinson, the Court held that a statute mandating a hearing within 20 days was mandatory. Although the 20 day notice provision was deemed perhaps an “unreasonably short period of time,” the Court concluded the statutory provision was mandatory, nevertheless, and must be enforced.

In addition, statutory notice provisions must be followed even with actual notice. As the Court of Appeals explained in Hawkins v. Bruno Yacht Sales, Inc., 342 S.C. 352, 355-56, 536 S.E.2d 698, 705 (Ct. app. 2000), aff’d as modified, 353 S.C. 31, 36, 577 S.E.2d 202, 205 (2003),

[t]o the contrary, our appellate courts have expressly held proof of actual notice to the defaulting taxpayer does not excuse non-compliance with statutory notice requirements. See Ryan, 335 S.C. at 395, 517 S.E.2d at 693 (“Even actual notice is insufficient to uphold a tax sale absent strict compliance with statutory requirements.”); Manji, 323 S.C. at 93, 473 S.E.2d at 838 (citing Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977) (failure to provide the required statutory notice to the true owner of the property is not excused, regardless of actual notice)); South Carolina Fed. Sav. Bank v. Atlantic Land Title Co., 314 S.C. 292, 295, 442 S.E.2d 630, 632 (Ct.App.1994) (“[S]tatutory notice requirements may not be circumvented simply by establishing actual notice of a tax sale.”); Donohue v. Ward, 298 S.C. 75, 83–84, 378 S.E.2d 261, 266 (Ct.App.1989) (“The giving of a mandatory notice to a tax debtor is not waived by the informal knowledge on [his] part that taxes have not been paid ... even if the debtor has actual knowledge of it and attempts to waive a failure to give notice.”).

While these cases involve tax notice requirements, they amply demonstrate the mandatory nature of a statutory notice requirement.

Statutory notice of meeting statutes are considered “mandatory, and constitute [ ] a jurisdictional condition precedent to the activation” of a public body’s power to act. In HealthSouth Doctors’ Hosp. Inc. v. Hartnett, 622 So.2d 146, 148 (Fla. 1993), the Court ruled that failure to comply with the statutory notice requirements for a meeting rendered an ordinance “null and void because the City failed to follow the mandatory notice requirements” of the

for the purpose of the investigation, the following information is being furnished:

On the 1st of January, 1941, the following information was received from the Bureau of the Census:

The following information was received from the Bureau of the Census on the 1st of January, 1941:

The following information was received from the Bureau of the Census on the 1st of January, 1941:

The following information was received from the Bureau of the Census on the 1st of January, 1941:

The following information was received from the Bureau of the Census on the 1st of January, 1941:

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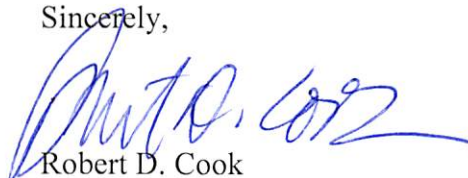
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statute. The words "shall be mailed" in a statute are deemed mandatory and must be followed. Wood v. City of Kalispell, 310 P.2d 1058 (Mont. 1957).

### **Conclusion**

Section 59-117-50 has not been amended since 1983 so as to include electronic mailing as a means to provide notice to trustees. The only means for notice contained in the statute is that the notice to each trustee "shall be mailed." In short, while proper notice may have been provided of the meeting under FOIA (we do not comment thereupon because this is a factual issue beyond the scope of an opinion), the statute requiring 5 days notice by mail to trustees is mandatory. This being the case, we have no room for interpretation of the statute. Only a court could conclude otherwise. Accordingly, it is our opinion that five days notice by mail means precisely that. The requirements of § 59-117-50 may not be waived.

Sincerely,



Robert D. Cook  
Solicitor General

THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE ARMY  
OFFICE OF THE ADJUTANT GENERAL  
WASHINGTON, D. C. 20315

MEMORANDUM

TO : THE ADJUTANT GENERAL  
FROM : THE ADJUTANT GENERAL  
SUBJECT: [Illegible]

