



HENRY McMASTER  
GOVERNOR

February 10, 2023

Chesterfield County Legislative Delegation  
178 Mill Street  
Chesterfield, South Carolina 29709

Dear Members of the Chesterfield County Legislative Delegation:

On behalf of the Office of the Governor (“Office”), I write to request information regarding two seats on the Northeastern Technical College Area Commission (“Commission”) appointed upon the recommendation of the Chesterfield County Legislative Delegation (“Delegation”). The Office has recently received inquiries pertaining to the Commission, including allegations of potential dual-office holding by one of its members. Based on a preliminary review of the Office’s records, it appears that eight of the Commission’s members may be serving in a holdover status beyond the expiration of their terms of office. Although the issue of expired terms is not limited to the Delegation’s nominees to the Commission, particularly in light of the potential dual-office-holding concerns, the Office is requesting an update from the Delegation regarding any anticipated recommendations for appointment or reappointment.

As the Delegation is likely aware, the Commission is composed of twelve members, three of whom serve ex officio, and nine of whom “must be appointed by the Governor upon the recommendation of a majority of the legislative delegation from the county in which the appointee is a resident for terms of three years and until their successors are appointed and qualify.” S.C. Code Ann. § 59-53-510. Of the Commission’s members, three must be qualified electors of Chesterfield County, three must be qualified electors of Marlboro County, and three must be qualified electors of Dillon County. *Id.* Although the Delegation recently addressed one of the three Chesterfield County seats, it appears that the terms for the remaining two have expired, with the previous appointees still serving in a holdover capacity pending receipt of recommendations from the Delegation regarding reappointment or the appointment of a successor.

According to the information available to the Office, the term for one of these Chesterfield County seats on the Commission expired in 2021, with the other member’s last term having expired in 1999. Where, as here, the Governor’s appointment authority is expressly conditioned “upon the recommendation” submitted by the Delegation, the South Carolina Supreme Court has held that such language makes clear that “the Governor’s appointment is merely a ministerial duty,” “since the appointment could not legally be made without the [Delegation’s] recommendation.” *Fowler v. Beasley*, 322 S.C. 463, 467, 468, 472 S.E.2d 630, 633 (1996) (citing *Blalock v. Johnston*, 180 S.C. 288, 185 S.E. 51 (1936)). As such, the Office

is respectfully requesting information from the Delegation regarding the two aforementioned positions and any plans to submit recommendations for appointment or reappointment.

In addition to requesting this information, the Office also notes that staff has recently received inquiries regarding Ms. Kimberly Burch's membership on the Commission and whether her concurrent service as a member of the Chesterfield County School District's Board of Trustees ("School Board") violates the South Carolina Constitution's prohibition on dual-office holding. *See* S.C. Const. art. VI, § 3; S.C. Const. art. XVII, § 1A. It is the Office's understanding that Ms. Burch was appointed to the Commission in 1997 for the remainder of the term expiring on May 1, 1999. The law provides that members of the Commission serve "for terms of three years and until their successors are appointed and qualify." S.C. Code Ann. § 59-53-510. While the Office is not aware of the Delegation having recommended Ms. Burch for reappointment (or having recommended another candidate) since Ms. Burch's appointment in 1997, it appears that Ms. Burch later began serving (and continues to serve) as a member of the School Board. Absent additional information or clarification, concurrent service by Ms. Burch on both the Commission and the School Board would seemingly violate the constitutional prohibition on dual-office holding.\* As a general rule, when dual-office-holding circumstances arise, "the law operates automatically to 'cure' the problem." *Op. Att'y Gen.*, 2022 WL 1127295, at \*2 (S.C.A.G. Apr. 11, 2022). However, because the Delegation has not recommended a successor, the Governor cannot make a new appointment. Consequently, the Office respectfully requests that the Delegation provide an update regarding the status of this seat (and the other Chesterfield County seat with an expired term) on the Commission.

Finally, as noted above, the Office's records reflect that the issue of expired terms on the Commission is not unique to the Chesterfield County seats. In fact, it appears that the six seats on the Commission which require a recommendation from the Dillon County Legislative Delegation or the Marlboro County Legislative Delegation may all be occupied by members serving in a holdover status. Accordingly, by copy of this letter, the Office is requesting a similar update regarding those positions.

Should the Delegation have any questions or concerns regarding this matter, please contact the Office's Director of Boards and Commissions, Kristy Quattrone, at [KQuattrone@governor.sc.gov](mailto:KQuattrone@governor.sc.gov). In the event the Delegation is aware of different or additional appointment-related information—whether from previous gubernatorial administrations or otherwise—which may not be reflected in the Office's records, please advise of the same.

Very truly yours,



Thomas A. Limehouse, Jr.  
*Chief Legal Counsel*

cc: Dillon County Legislative Delegation  
Marlboro County Legislative Delegation

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\* *See, e.g., Op. Att'y Gen.*, 2002 WL 1340430, at \*1 (S.C.A.G. May 13, 2002) (opining that membership on the Commission constitutes an office); *Op. Att'y Gen.*, 2006 WL 1207284, at \*1 (S.C.A.G. Apr. 20, 2006) (referencing, in the context of the School Board, numerous prior opinions concluding that a school board member holds an office for dual-office-holding purposes"); *Op. Att'y Gen.*, 1991 WL 633071, at \*1 (S.C.A.G. Nov. 1, 1991) (advising then-Rep. Burch "that one who would serve concurrently on a school board" and another office "would most probably run afoul of the dual office prohibitions" and that official would be "deemed to have vacated the former office" but "may continue to perform the duties of the previously held office as a de facto officer").