



State of North Carolina

Department of Justice

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REPLY TO:
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January 26, 2012

Mr. Gary O. Bartlett
Executive Director
State Board of Elections
6400 Mail Service Center
Raleigh, North Carolina 27699-6400

Via Email: gary.bartlett@ncsbe.gov

Re: Request for Advisory Letter on Implementation of Session Law 2011-407

Dear Mr. Bartlett:

You have requested an advisory letter on the proper implementation of Section 3 of S. L. 2011-407, local legislation amending the way in which county commissioners are elected in Guilford County. The question has arisen because the Guilford County Board of Elections, after consultation with its county attorney, has concluded that it does not have the administrative authority to remedy some anomalies in the legislation with apparently unanticipated consequences. The Guilford County Board of Elections has unanimously concluded that it must conduct the elections for seats on the Guilford Board of Commissioners "based on the mandates included in Section 3(d) of the Act, admitting candidacies only for the district contests in Districts 4, 5, 7, and 8." (Letter from T.J. Warren to Gary Bartlett, Jan. 18, 2012)

The Guilford County Board of Elections was apparently troubled by the inequities they had identified in the legislation and requested guidance from the State Board of Elections on whether it could facilitate a remedy for those inequities. You, in turn, have written to request an advisory letter on the authority of the State Board of Elections in this matter.

In *Tucker v. N.C. Board of Alcohol Control*, 240 N.C. 177, 180, 81 S.E.2d 399, 401 (1954), Justice Ervin wrote for the North Carolina Supreme Court:

There is no inherent power in any governmental body to hold an election for any purpose. In consequence, an election held without affirmative constitutional or statutory authority is a nullity, no matter how fairly and honestly it may be conducted.

(citations omitted)

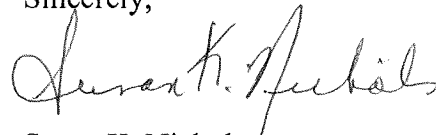
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Section 3(d) of S. L. 2011-407 establishes a nine-member Board of Commissioners with staggered elections. "In 2012 and quadrennially thereafter, members for Districts 4, 5, 7, and 8 shall be elected for four-year terms. In 2014 and quadrennially thereafter, members for Districts 1, 2, 3, and 6 and the at-large member shall be elected for four-year terms." This Act provides authority for elections in 2012 only for Districts 4, 5, 7, and 8.

The problems that may arise because no commissioner will be elected to the District 6 seat or the at-large seat until 2014 may not be addressed by elections officials because they are without power under these circumstances to schedule an election that has not been authorized by statute or to reschedule one for an earlier date. It is appropriate, as your office and the county elections officials have already done, to discuss your concerns about anomalies in S.L. 2011-407 with the legislature and its staff.

This is an advisory letter and has not been reviewed and approved in accordance with the issuance of a formal opinion of the Attorney General.

Sincerely,



Susan K. Nichols
Special Deputy Attorney General

cc: T.J. Warren, Chairman, Guilford County Board of Elections
Grayson G. Kelley, Chief Deputy Attorney General