

EGGERS, EGGERS, EGGERS, AND EGGERS

ATTORNEYS AND COUNSELORS AT LAW

P.O. BOX 248

BOONE, NORTH CAROLINA 28607

STACY C. EGGERS, JR.
STACY C. EGGERS, III (1948-1990)
REBECCA EGGERS-GRYDER
STACY C. EGGERS, IV
KIMBERLY M. EGGERS
AUSTIN F. EGGERS

PHONE (828) 264-3601
FAX (828) 262-5229
737 WEST KING STREET

September 4, 2014

Jane Ann Hodges
Watauga County Board of Elections
842 West King Street, Suite 6
Boone, NC 28607
VIA HAND DELIVERY

Re: Letter of August 18, 2014 of Ms. Kathleen Campbell

Dear Ms. Hodges,

It was nice to speak with you on September 3, 2014 regarding Ms. Kathleen Campbell's letter to you of August 18, 2014. As we discussed on the telephone, I did not receive a copy of that letter until it was kindly hand delivered to me today by your office. It appears that Ms. Campbell did not have the correct email address for me on the copy of her email you provided.

On or about July 24, 2014, Mr. Nathan Miller submitted a public records request to Ms. Campbell requesting certain items which she referenced in her handouts to the Watauga County Board of Elections at their meeting on July 23, 2014. On August 11, 2014, Mr. Miller wrote to me as the attorney for Watauga County regarding the lack of response by Ms. Campbell to the public records request and requested that I contact her regarding the lack of a response to his request. On August 13, 2014, I wrote to Ms. Campbell (and copied you and the County Manager) regarding the requirements of board members to respond to public records requests as required by N.C. Gen. Stat. §132-6. I received no response from Ms. Campbell or otherwise regarding my letter, and only received Ms. Campbell's letter on September 3, 2014.

In our conversation today, you asked me to provide a response to you as to Ms. Campbell's request that you designate a custodian of records for her. As we discussed on the telephone, it is not necessary for the director of the Board of Elections to designate a "custodian of the records." N.C. Gen. Stat. §132-2 provides: "The public official in charge of an office having public records shall be the custodian thereof." As the appointed director of the Watauga County Board of Elections and the members of the Watauga County Board of Elections, each are 'public officials' for purposes of this statute. See N.C. Gen. Stat. §163-30; 163-35. As such, you and each of the individual board members may be the custodian of public records which are in your possession.

While there may be alternate sources to which a public records request may be made, such as the State Board of Elections, N.C. Gen. Stat. §132-6(a)

requires that "*Every custodian* of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times..." (*emphasis added*). In reviewing the public records request of July 24, 2014, it appears these items would relate to Ms. Campbell's statements at the July 23, 2014 board meeting and items referenced in her handout, including her emails. These items would be ones that would be in the custody of Ms. Campbell for purposes of the North Carolina public records law. See N.C. Gen. Stat. §132-6.

To the extent there are no records which are responsive to a particular request, it may simply be stated that the individual has no records responsive to that request. It is not necessary for an individual to generate a record which does not exist to satisfy a public records request. With that being said, I would reiterate my cautionary advice that once a record exists and is subject to a public records request, it is a misdemeanor offense to destroy or dispose of such record. N.C. Gen. Stat. §132-3.

Toward the end of our conversation, you stated to me that Ms. Campbell had called you that morning and stated to you that Mr. Miller had filed suit against her. If Ms. Campbell wishes to provide me with a copy of such suit, I would be happy to review it with the Watauga County Commissioners to determine whether the subject matter falls within the scope of an official action for which a response to the lawsuit may be provided on her behalf. Please forward a copy of this letter to Ms. Campbell for her review and consideration at your earliest convenience.

I hope this finds you well, and should you have any additional questions or concerns, please do not hesitate to call.

Very truly yours,



Stacy C. Eggers, IV

cc: Deron Geouque, County Manager