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## MEMORANDUM

To: Matthew Snyder, Director  
Watauga County Board of Elections

From: Stacy C. Eggers, IV, Watauga County Attorney 

Cc: Josh Lawson, Esq., General Counsel – N.C. Board of Elections  
Deron Geouque, Watauga County Manager

Date: August 22, 2016

Re: Interpretation of the location of "Office of the County Board of Elections"  
N.C. Gen. Stat. §163-227.2(b)

Per our discussion last week regarding the location of the County Board of Elections office, I have researched the issue and provide you with the following Memorandum. I am copying this Memorandum to Josh Lawson, Legal Counsel for the State Board of Elections, so that he may provide additional guidance if he deems it appropriate. To the extent Mr. Lawson's direction may differ from this Memorandum, I would recommend you defer to Mr. Lawson and direction you may receive from the State Board of Elections.

By way of background, the Watauga County of Board of Elections address is 842 West King Street in Boone, North Carolina. It is situated on the ground floor of the Watauga County Courthouse in downtown Boone. The physical area of your main office consists of a common area for reception of visitors, your personal office, an office for a deputy director, a storage room, and a small conference room. There is an additional storage room and a meeting room across the hall from your office, which is commonly referred to as "Courtroom 3" or "the old Commissioners Boardroom." This floor also houses the County Information Technology offices and the Watauga County Sheriff's Office Civil Division, which is responsible for courthouse security and operates a metal detector at the main entrance to the Courthouse. Next door to this building, having a street address of 814 West King Street, is the Watauga County Administration building. The ground floor of this building is solely dedicated to a room called the new Commissioners Boardroom, a conference room, and restrooms. There is no intervening street between these buildings, and they have a sign in from of them stating "Watauga County Government Center."

The Watauga County Board of Elections office has been situated at its present location since 2011, when they relocated to allow Watauga County space to operate a license plate agency at its former location on Water Street. With the exception of one election, all other elections since this date have used the Commissioners Boardroom as part of the county board of elections office for One-Stop Early Voting. In the one election where Courtroom Three was used, it required the removal of the bench seating from the audience and reconfiguration of the sheriff's metal detectors to allow voters to enter the voting enclosure without need to pass through a metal detector. While this was an option, it was less than ideal to meet the needs as a polling site and conflicted with the needs of the court system. The Commissioners Boardroom is easier to reconfigure, does not interfere with the needs of the court system, and avoids the appearance of law enforcement officers and metal detectors at a polling location.

The Commissioners Boardroom is the regular meeting site of the Watauga County Board of Elections (unless a crowd is expected, and it is moved to the large courtroom on the top floor of the courthouse). The Commissioners Boardroom is also the regular Election Day polling location of the Boone 1 precinct, and has served in such capacity since its construction in 2006. To my knowledge, it has been unanimously selected in each vote of the local board as the immediately adjacent site for the County Board of Elections Early Voting location since the relocation of the County Board of Elections Office, with the exception of the election stated above.

N.C. Gen. Stat. §163-227.2(b) provides, in relevant part:

*"... the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (g) of this section.... That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board...."*

At its August 15, 2016 meeting, the Watauga County Board of Elections did not adopt an early Voting Plan, and no plan was forwarded to the State due to the failure of any plan to receive a majority vote from the Board members. It is unclear at this time whether the State Board of Elections will, or has the authority to, consider and adopt an Early Voting plan for Watauga County. In the event they do so, I would encourage you and the Board members to list the Commissioners Boardroom as a proposed location of county board of elections office, if that is the desire of the board. This would avoid any question on this issue, as N.C. Gen. Stat. §163-227.2(g) allows for an alternative "Plan not to offer one-stop voting at the county board of elections office;" however, any such one-stop plan would need to include "at least one site reasonably proximate to the county board of elections office."

To the extent the State Board of Elections does not adopt an early voting plan for Watauga County and early voting is governed by the statutory authority set forth above, the purpose of this Memorandum is to advise you that it is my legal opinion that the Watauga County Commissioners Boardroom would qualify as part of the county board of elections office for purposes of N.C. Gen. Stat. §163-227.2(b). Under these facts and the definition of the "office of the county board of elections," the Commissioners Boardroom could be utilized for One-Stop purposes without need for further action of the County Board of Elections or State Board of Elections.

Both of these buildings are part of the Watauga County Government Complex in downtown Boone. Although the office of the director and staff are housed in the basement of the Courthouse building, the Watauga County Board of Elections routinely meets in the Commissioners boardroom, and is considered part of the board of elections office for this purpose. By similar analogy, although the offices of the Watauga County Tax Administrator are housed in the courthouse building, all meetings of the Board of Equalization and Review (which handles all tax appeals) meet on the ground floor of the Administration building. The only feature between these two buildings is some landscaping and the flags of the United States and the State of North Carolina. This opinion is further supported by custom and precedent of the Watauga County Board of Elections, having utilized the Commissioners Boardroom as part of the board of elections office for One-Stop Early Voting since 2010.

While every county's particular application of this statute will vary depending upon its size, location of county board of elections office, resources, and building configurations, considering the Commissioners Boardroom as being part of "the county board of elections office" is a reasonable interpretation of the statute. Additionally, while it would be appropriate to obtain the concurrence of the county board members in making this determination, I do not believe it would be necessary to do so based upon the reasonable application of the statute, the location of the respective rooms, and past precedent and custom. Both buildings in the Watauga County Government Center are served by the same parking lots and infrastructure. Finally, the statute envisions that a "voter shall enter the voting enclosure at the board office through the appropriate entrance." Based upon these particular facts, that entrance can be the door to the Commissioners Boardroom.

I hope this Memorandum is helpful to you. Should you need any additional assistance, please contact me at your convenience.