

Guidance Regarding Removal of a District Supervisor for Non-participation in Board Meetings and Functions

Approved by Soil and Water Conservation Commission at its March 16, 2011 meeting

Purpose

From time to time the commission is petitioned to consider removing a district supervisor from office. The purpose of this guidance is to establish clear procedures and criteria for districts to observe when considering a petition to remove a supervisor for neglect of duty. The guidance does not address situations involving incompetence nor malfeasance.

Background on Commission Authority to Remove Supervisors

G.S. 139-7 states, “Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.” Further, the commission’s regulations governing organization and operation of districts state in 02 NCAC 59A.0104, ” Evidence of neglect of duty shall include, but is not limited to, the ceasing to discharge the duties of the office over a period of three consecutive months except when prevented by sickness. District boards shall advise the commission in writing of the failure of any supervisor to so discharge his duties over the three-month period.” The Commission interprets the phrase “three consecutive months” to mean “three consecutive regularly-scheduled local district meetings”.

A recent informal opinion by the Attorney General’s office interprets “any supervisor” as mentioned in GS-139 to mean both elected and appointed supervisors.

Suggestions to Districts for Due Diligence

If there is concern by the local SWCD regarding inactivity of a seated supervisor, it is important for the district to handle the situation in a business-like manner. This way, the handling of the matter by the SWCD can be documented and, if the matter has to be forwarded to the commission for action, the board can demonstrate their due diligence in attempting to handle the matter at the local level.

The following guidance is offered to assist the district in demonstrating due diligence with regard to supervisor participation.

- 1) Any time a board member is not at a meeting and there is no prior notification of his/her planned absence, a courtesy phone call to check on the person is recommended so concern could be expressed regarding the absence. This shows interest by the board regarding their members.
- 2) If the person misses three consecutive meetings, the board should write the supervisor expressing that he or she has missed three or more consecutive meetings and requesting written response from the individual regarding the reasons for the absences.
- 3) If the reasons given by the person are acceptable to the board, a closure letter back to the individual should be sent, inviting the person to the next meeting, and

- providing time and place. If the reasons given by the person are without cause or are questionable from the board's perspective, correspondence specifically inviting the person to the next board meeting to discuss the absences should be sent, thereby providing an opportunity for the person to provide additional input and have a chance to meet in person with the board and discuss the matter.
- 4) If no response is received from the individual or if the reasons for three or more consecutive absences remain unacceptable to the board, the board should discuss the matter at an official open board meeting and decide, through motion and vote, the action to be taken. This discussion, motion, and vote must occur in open session.
 - 5) If the board decides to forward the matter to the Commission with a recommendation for removal from office, additional correspondence to the person informing him/her of the board's decision, reasons for the decision, and planned referral to the Commission should be sent. The person should also be informed of his/her right to appear before the Commission at the meeting when the matter is considered and inform him/her how to request to be placed on the Commission agenda.
 - 6) In its petition to the Commission to remove the supervisor, the district should forward all documentation supporting the request for removal, including, but not limited to, copies of letters and meeting minutes.

This process will take several months but, because of the seriousness of removing someone from office, the time is well worth it. This way, if the matter is referred to the Commission for action, the SWCD will be able to demonstrate to the Commission that the local SWCD has made a reasonable attempt to handle the matter at the local level and that they have fulfilled their responsibility under due diligence.