

The State of South Carolina



Office of the Attorney General

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November 23, 1992

John M. Milling, Esquire
Attorney at Law
100 St. John Street
Darlington, SC 29532

Dear John:

On behalf of the Darlington County Board of Education (Board), you have requested the opinion of this Office as to when the members of the Board take office under new legislation and whether any shortening of the terms of existing members of the Board is constitutional. Act No. 588, 1992 S.C. Acts _____, as amended by Act No. 589, 1992 S.C. Acts _____. These Acts amend Act No. 748, 1978 S.C. Acts 2413 under which the Board is composed of twelve members serving staggered four year terms that commenced on May 1, following the election for the respective positions. Acts 588 and 589 of 1992 contain provisions for an eight member Board to take office on January 1, 1995 following the 1994 elections, which were approved in a referendum as provided in Act 588. Your question relates to the commencement of the terms of office of members of the current twelve member Board who were elected in the 1992 general election.

Act No. 588 of 1992 expressly provides, in part as follows:

Section 5(A). The following provisions of Section 1 of Act 748 of 1978 as contained in section 1 of this Act, take effect upon approval by the Governor:

"A member's term of office commences on the first day of January next following his election...."

Although the provisions of Section 1 of Act 588 were amended in Act 589, section 5 of the earlier law was not amended.

JOHN M. MILLING, ESQUIRE

November 23, 1992

Page 2

"Where the terms of a statute are clear and unambiguous, there is no room for interpretation and [a court] must apply them according to their literal meaning." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986). Applying this rule here to Act 588, section 5, the terms of office of the members of the Board elected in November 1992 would commence on January 1, 1993. Although section 5 quotes section 1 and section 1 was amended by Act 589, section 5 does not appear to be affected by the amendment. The Legislature expressly provided in Act 588 that section 5 would take effect "upon approval by the Governor" whereas section 1 was contingent upon approval in the referendum. See Act 588, section 4. Therefore, the General Assembly indicated the legislative intent to change the time of commencement of the terms of the twelve member Board even if the change to an eight member Board was not approved in the referendum.

According to the information you have provided, some Board members will have their terms of office shortened as a result of the change to the January 1 term commencement, and you have asked whether the shortening of those terms would be constitutional. The terms of offices created by the General Assembly, such as the Board here, can be shortened or extended by the General Assembly. Ops. Atty. Gen. December 22, 1988; see also Ops. Atty. Gen. No. 85-68, July 16, 1985; Ward v. Waters, 184 S.C. 353, 192 S.E. 410 (1937); Wapole v. Wall, 153 S.C. 106, 150 S.E. 760 (1929). Therefore, Act 589 does not unconstitutionally shorten the terms of members of the Board.

The terms of Board members elected in November 1992 commence January 1, 1993. The shortening of the terms of the existing Board members is not unconstitutional.

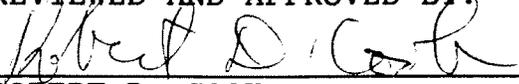
If you need additional information, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:


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