



Office of the Attorney General

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February 11, 1988

The Honorable Thomas E. Smith, Jr.
Senator, District No. 30
402 Gressette Building
Columbia, South Carolina 29202

Dear Senator Smith:

Referencing a vacancy on the Florence School District No. 1 Board of Trustees, the term of which position will expire in May 1989, you have asked for what length of time the successor to the trustee, appointed by appropriate members of the Florence County Legislative Delegation, would serve.

The response to your inquiry is governed by Section 5 of Act No. 239, 1981 Acts and Joint Resolutions, which provides:

Vacancies on the board shall be filled by so many of the members of the House of Representatives and Senate elected from districts wholly or in part within the bounds of school district number one of Florence County for the unexpired term. If more than half of a term remains and the appointment is made at least forty-five days prior to a school board election, the appointment by such members of the General Assembly shall be only until that election, at which time the unexpired portion of the term shall be filled by election.

Section 1 of the Act provides for a three-year term of office for trustees. At this time, less than half of a three-year term expiring in May 1989 would remain. An election will be held on the first Tuesday in May 1988, which is more than forty-five (45) days from today. Thus, the question is whether an election

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would be held in May 1988 to fill the vacancy, so that the Delegation's Appointee would serve only until the election and the newly-elected successor would complete the unexpired term. We think not.

The term "and" is used in the conjunctive sense. Bohlen v. Allen, 228 S.C. 135, 143, 89 S.E.2d 99 (1955). Unless more than one-half of the three-year term remains and the appointment is made at least forty-five (45) days prior to a school board election, the Delegation's appointee would serve for the unexpired portion of his successor's term of office, in this instance until May 1989. Both requirements must be met in order to fill the vacancy for the unexpired portion of the term by election as contemplated by Section 5 of the Act.

With kindest regards, I am

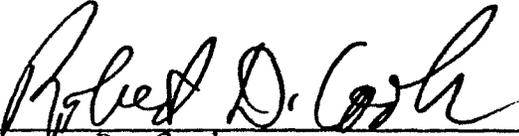
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions