

The State of South Carolina

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August 1, 1988

The Honorable John W. Tucker, Jr.
Member, South Carolina House of
Representatives
Route 1, Highway 81 North
Anderson, South Carolina 29621

Dear Representative Tucker:

You have requested the advice of this Office as to whether the new member of the State Board of Education (State Board) from the Anderson County area will be chosen by the current legislative delegation from that area or the delegation that will take Office in November, 1988. Section 59-5-10 of the Code of Laws of South Carolina, 1976 provides that the terms of members of the State Board shall commence on January 1st following their election by the legislative delegations representing the counties of each judicial circuit. No time is specified in that statute for when such elections are to be held other than "...upon written call of a majority of the members of each judicial circuit at a time and place to be designated in such call...." (Emphasis added). Under a "plain reading" of this provision (South Carolina Department of Highways and Public Transportation v. Dickinson, 341 S.E.2d 134 (SC 1936); Sutherland Statutory Construction, Vol. 2A §46.01 et seq.), the timing of the election is discretionary with the delegation. No limits are set as to which delegation may set the time for the election. Accordingly, the position in question on the State Board of Education could be filled by whichever delegation first chose to elect the new member. Cf. Ops. Atty. Gen. No. 79-137 (December 13, 1979).

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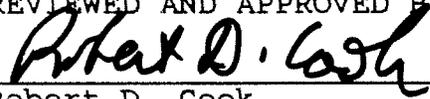
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESJR/srcj

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions