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February 28, 1986

The Honorable Joyce C. Hearn  
Member, South Carolina House  
of Representatives  
404C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Hearn:

You have requested advice as to which public official or body has the authority to fill a vacancy on the Richland County School District One Board of Trustees (District One Board). We conclude that the District One Board would have authority.

We base this conclusion upon a local law for Richland County which is codified at Section 21-3918 of the Code of Laws of South Carolina, 1962. This provision gives the District One Board the express authority "...to fill any vacancy that may occur in the School Board for the unexpired term...." This provision has not been repealed by subsequent provisions which changed the method of selection of the Board. See, Section 21-3914 as amended and Act 585, Acts and Joint Resolutions of South Carolina, 1971.

Vacancy filling for District One is not controlled by the authority given to the Richland County Council to fill vacancies in the Richland County School District Two Board of Trustees because the law treats Districts One and Two differently as to vacancy filling. See, Ops. Atty. Gen. (July 31, 1985). Council derives its authority over District Two vacancies from legislation giving council some of the powers of the former Richland County Board of Education. Id. and Act 140 of 1969. The powers of the old County Board given to Council included filling vacancies on the District Two Board pursuant to local legislation for the Richland County Board and legislation for county boards of education generally. Id. This authority does not appear to apply to School District One because the special provision for the county board's filling vacancies was made inapplicable to District One. Section 21-3886 of the 1962 Code. The general provisions for county boards of education to fill vacancies would not appear be applicable to

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District One because the old County Board had jurisdiction "...only over the school and educational interests in Richland County outside...(emphasis added)" District One. Section 21-3913; see also, Section 21-3912 and Ops. Atty. Gen. (February 23, 1984 and July 31, 1985, note 1). Therefore, the old County Board had no vacancy filling authority for District One to pass on to the County Council, and Council has not been given that authority by any other source.

In conclusion, the Richland County School District One Board of Trustees appears to have the authority to fill vacancies occurring on that Board. This authority is based upon express statutory provisions which do not apply to School District Two.

If you have any questions or if I may be of other assistance, please let me know.

Yours very truly,



J. Emory Smith, Jr.  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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