

## The State of South Carolina



## Office of the Attorney General

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January 6, 1986

W. Keith Parris, Executive Secretary  
Board of Education  
187 North Church Street  
Spartanburg, South Carolina 29301

Dear Mr. Parris:

You have requested the advice of this office as to a matter concerning the election of school district trustees of Spartanburg County pursuant to Act 612, Acts and Joint Resolutions of South Carolina, 1984. This law sets filing requirements for candidates for the election and provides for the County Board of Education's (County Board) appointment of a successor "[i]n the event no petition is filed within the time limit specified...." (Emphasis added). Specifically, your question is whether the County Board of Education's appointment authority may be invoked when the number of petitions filed is less than the number of seats to be filled on a district board. An example of such a situation would be the filing of only two petitions for three seats on a district board. The statute does not require that candidates designate the seat for which they are running, and my understanding is that the seats are not designated for filing purposes. My understanding also is that the circumstance of a candidate shortfall did not occur this year in Spartanburg County but that you would like this question answered for future guidance.

The following rule of statutory construction is applicable here:

In the construction of statutes, the dominant factor is the intent, not the language of the legislature. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Id. Spartanburg Sanitary Sewer District v. City of Spartanburg, \_\_\_\_\_ S.C. \_\_\_\_\_, 321 S.E.2d 258 (1984).

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Here, although Act 612 does not expressly address your question, the provisions of this law indicate a legislative intent that appointments should be made to make up a candidate shortfall. Clearly, under the statute, the County Board would have the authority to appoint successors in the event no petitions were filed for any of the seats to be filled. Accordingly, the statute indicates no legislative intent to require an election to be held for those seats for which no candidate has filed merely because some petitions have been filed for the other seats. Although a general statute specifically provides for write-in votes on election ballots and the validity of write-in votes has been recognized by the Supreme Court of this State and opinions of this office, the possibility of write-in votes should not be a governing factor in the construction of Act 612. See §7-13-360 of the Code of Laws of South Carolina, 1976; Redfearn v. Board of State Canvassers, 234 S.C. 113, 107 S.E.2d 10 (1959); Ops. Atty. Gen. (October 10, 1964, June 19, 1964 and March 2, 1961). <sup>1/</sup> The legislature clearly chose not to rely on write-in votes to fill seats when no petitions are filed and Act 612 indicates no purpose or intent to rely on write-ins to fill seats merely because some, but not enough, petitions have been filed. In other words, under the example given above in which only two petitions are filed for three seats, the legislature has indicated no intent to rely on a write-in candidate to fill the third seat when it does not require an election and rely on write-in candidates when no petitions have been filed for any seats. That these seats are undesignated does not indicate that the appointment provisions should be applied differently.

In conclusion, Act 612 indicates the legislative intent that an election be held only for those seats for which petitions have been filed. In the event that petitions are filed for only some of the undesignated seats, the election should be held only for the number of seats equivalent to the number of petitions filed. See 1960-61 Ops. Atty. Gen. No. 1063. The remaining seats should be filled by appointment; however, because of the absence of express direction in the statute and because you are not yet faced with the circumstances posed in your opinion request, you may wish to consider seeking legislative clarification to resolve this matter with certainty.

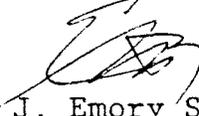
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<sup>1/</sup> Some of this authority is based in part upon statutory provisions that have since been amended or repealed; however, §7-13-360 makes clear that write-in votes may be cast for elective offices except for President and Vice-President.

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If you have any questions or need further 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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Robert D. Cook  
Executive Assistant for Opinions