

1984 WL 249826 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1984

\*1 The Honorable Harry A. Chapman, Jr.  
Senator  
District No. 2  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Chapman:

You have requested the advice of this Office as to whether the General Assembly, when filling vacancies on particular college boards of trustees created by resignation, should utilize its normal screening process for selecting candidates to sit on those boards. The two boards in question are the State College Board of Trustees (See Section 59-105-30 of the Code of Laws of South Carolina (1976), as amended) and the Board of Trustees for South Carolina State College (See Section 59-127-20, as amended). According to the information provided by your staff, the Governor appointed persons to fill vacancies created on those boards by resignations between the 1983 and 1984 legislative sessions.

The statutes for both boards contain similar language. Section 59-105-30 provides for the Governor's filling vacancies by appointment until the next session of the General Assembly except that the vacancy is filled for the remainder of the term in the one position to which the Governor regularly appoints a member. Sections 59-105-10 and 59-105-20 provide for the General Assembly's regular election of all members of the board except for the one chosen by the Governor. Comparable provisions for South Carolina State College are contained in Section 59-127-20.

According to the information provided to us, the positions in question here are ones regularly chosen by the legislature. None of these statutes expressly state that the General Assembly fills vacancies in those positions; however, this authority is clearly implied. When vacancies in those positions are filled by the Governor, a reasonable reading of the statutory language indicates that the term of the appointment is limited in duration to the beginning of the next session of the General Assembly.<sup>1</sup> This interpretation of this limitation is supported by the express exception to it when the position is the one of either board to which the Governor regularly appoints a member. See Sutherland Statutory Construction, Vol. 2A, § 46.05. Because the beginning of the General Assembly's session limits the term of the temporary successor, the law indicates that the General Assembly is to act to fill the vacancy permanently.<sup>2</sup> This conclusion is clearly supported by the legislature's having the power to elect members to fill the regular terms of office for those positions, and the indication in case law that some authority should have the power to fill vacancies. Cf. Bradford v. Byrnes, 221 S.C. 255, 70 S.E. 2d 228, 231 (1952). This interpretation also allows for all vacancies to be filled permanently rather than just the position to which the Governor makes regular appointments. See also, § 2-19-10.

For the above reasons and under the circumstances described herein, the General Assembly does appear to have the authority to fill vacancies on the boards of trustees in question. Section 2-19-20 of the Code provides for screening of '[a]ny person wishing to seek an office which is elected by the General Assembly. . . .' Because the offices in question are chosen by the General Assembly and because no exceptions are made in the screening law for elections to fill vacancies, candidates for the vacancies would normally appear to come under the terms of this statute.

\*2 If we may be of other assistance, please do not hesitate to contact us.

Yours very truly

J. Emory Smith, Jr.  
Assistant Attorney General

Footnotes

- 1 This limitation might be subject to common law holdover authority. See 63 Am. Jur. 2d, Public Officers & Employees, § 135; Op. Atty. Gen. (September 27, 1983).
- 2 We do not address here the duration of those vacancy filling appointments by the General Assembly.  
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