

1976 S.C. Op. Atty. Gen. 181 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4351, 1976 WL 22970

Office of the Attorney General

State of South Carolina

Opinion No. 4351

May 14, 1976

***1 As of May 19, 1976, the effective date of R-681, the Governor is authorized to fill all vacancies on the Board of Trustees of School District No. 2 of Sumter County, including those vacancies in existence on the effective date of the act.**

Member

House of Representatives

District No. 69

You ask whether Act 596 of 1976 (R. 681) authorizes the Governor, upon the recommendation of the Sumter County governing body, to fill those vacancies on the Board of Trustees of School District No. 2 of Sumter County which existed on the effective date of the act?

Act 596 of 1976 (R. 681) amended Section 21-4079 of the 1962 Code, to provide that vacancies on the Board of Trustees of School District No. 2 of Sumter County, 'shall be filled by appointment of the Governor upon the recommendation of the governing body of the county for the unexpired portion of the term only.'

The rules of statutory construction require that an original act and all acts amendatory thereto be read together, and that all irreconcilable conflicts be resolved in favor of the most recent expression of the legislature. However, when the amendatory act sets out the body of the original act or particular section thereof as amended, the task is somewhat easier, since all those portions of the original act or particular section thereof which are omitted are considered repealed:

. . . [W]hen the amendatory act purports to set out the original act or section as amended, as the constitution may require the legislature to do, all matter that is omitted in the act or section which the amendment purports to set out as amended, is considered repealed. The intent of the legislature to set out the original act or section as amended is most commonly indicated by a statement that the original law is amended 'to read as follows.' Vol. 1A, Sutherland Statutory Constitution, 4th ed., § 23.12 (footnotes omitted).

The question arises as to whether the amendatory act is to apply to situations in existence on the effective date of the act or whether the amendment is to apply only to future situations. If the amendment affects substantive or vested rights it is generally applied prospectively whereas if the amendment only affects procedural or remedial rights it will gradually operate retrospectively:

In accordance with the rule applicable to original acts, it is presumed that provisions added by the amendment affecting substantive rights are intended to operate prospectively. Provisions added by the amendment that affect substantive rights will not be construed to apply to transactions and events completed prior to its enactment . . .

However as in the case of original acts, in the absence of a saving clause or statute or some other clear indication that legislative intent is to the contrary, provisions added by the amendment that affect procedural rights—legal remedies—are construed to apply to all cases pending at the time of the enactment and all those commenced subsequent thereto. But the new provision will not affect a proceeding entirely closed before the amendment became effective.

***2** Vol. 1A, Sutherland Statutory Construction, 4th Ed. § 22.36 (footnotes omitted)

Since transfer of the appointment power from the local board of trustees to the Governor involves an alteration of the mode of procedure for filling a vacancy rather than a substantive or vested right such as contract or property rights, Act 596 of 1976, (R. 681) will operate retrospectively. *See e.g., Howard v. Allen*, 368 F. Supp. 310 (1973); *Superior Motors, Inc. v. Winnebago Industries, Inc.*, 359 F. Supp. 773 (1973); *Dunham v. Davis*, 229 S. C. 29, 91 S. E. 2d 716 (1956).

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