

1976 WL 30753 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1976

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Superintendent
Sumter County School District No. 2

QUESTIONS PRESENTED:

Whether under Section 21-4079, Code of Laws of South Carolina, 1962, as amended, the Trustees of School District No. 2 of Sumter County may, by the vote of three out of a total of six members in attendance and voting, appoint a person to fill, for the unexpired portion of the term, a vacancy on the Board.

Whether such a vote by the Trustees may be taken in closed session.

AUTHORITIES:

1975 Acts (38) 39;

1974 Acts (980) 2112;

Sections 1-20.3 and 21-4079, Code of Laws of South Carolina, 1962, as amended;

[Gaskins v. Jones, 198 S.C. 508, 18 S.E.2d 454 \(1942\);](#)

Vol. 4, McQuillin on Municipal Corporations, § 1330 (3rd Ed.).

DISCUSSION:

Act 38 of 1975, amended on May 19, 1976 by Act ____ of 1976 (R681), provided that in the event of a vacancy on the Board of Trustees of School District No. 2 of Sumter County, 'the Trustees shall appoint a person to fill such vacancy for the unexpired portion of the term only.' The question presented is whether, prior to this 1976 amendment and the accompanying devolution of this appointive power on the Governor, a vote of three board members out of a total of six would suffice to make an appointment filling this vacancy.

Section 21-4079, Code of Laws of South Carolina, 1962, as amended (Act 980 of 1974) provides that the Board of Trustees of School District No. 2 of Sumter County shall consist of seven members. Unquestionably six members would thus constitute a quorum sufficient to act and bind the entire Board. In the absence of a contrary provision by law, if a quorum is present, a majority of a quorum is sufficient to act and bind the entire body. [Gaskins v. Jones, 198 S.C. 508, 18 S.E.2d 454 \(1942\);](#) Volume 4, McQuillin on Municipal Corporations, Section 13.30 (Third Edition). No contrary provisions in the law appear in this instance. Clearly, three votes in favor of a particular appointment, out of a total of six votes cast, do not constitute a majority and so would not suffice to fill a vacancy on the Board.

Furthermore, a vote of appointment conducted in a closed session of the Board would be in violation of Section 1-20.3, Code of Laws of South Carolina, 1962, as amended, commonly referred to as the 'Freedom of Information Act.' As provided in pertinent part of Section 1-20.3 states that:

'(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of each public agency of the State shall be open to the public.

(b) Executive sessions shall be permitted only for the purpose of discussing or considering: (1) Employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, administrative briefings and committee reports.'

Thus, though the Board could go into executive session for the purpose of discussing or considering an appointment, since there is no exception provided by law to allow the actual vote on the appointment to be taken in executive session, such a secret vote would violate the 'Freedom of Information Act'.

*2 Irrespective of this conclusion, which is not entirely free of doubt and hinges on the meaning assigned by the General Assembly in its choice of the words 'discuss' and 'consider', nevertheless the actions of the Board, if otherwise valid, would not be invalidated by a violation of the 'Freedom of Information Act'.

Furthermore, Act ___ of 1976 (R698), adopted on May 19, 1976, makes it clear that a 'recorded vote committing the body concerned to a specific course of action' may now be taken in an executive session, provided this action is' thereafter ratified in public session prior to such action becoming effective.'

CONCLUSION:

An affirmative vote of three members out of a total of six votes cast was not sufficient to select an appointee to fill a vacancy on the Board of Trustees of School District No. 2 of Sumter County.

Such a vote, if conducted in closed session, would have been violative of the South Carolina 'Freedom of Information Act' as it existed prior to amendment by Act ___ of 1976 (R698). Such a vote could now be conducted in closed session if it is recorded and if it is ratified in public session prior to such act becoming effective.

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