



ALAN WILSON
ATTORNEY GENERAL

December 16, 2021

The Honorable Tom Corbin
Member
South Carolina Senate
District No. 5
P.O. Box 142
Columbia, SC 29202

Dear Senator Corbin:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

The Spartanburg County School District I Board of Trustees currently has a vacancy due to the untimely death of Mr. Jeff Proper. There is some uncertainty about the proper manner in which the vacancy must be filled. I am writing to request that you review the matter and provide me with your opinion as to the proper method of filling the vacancy.

In 1988, the General Assembly enacted Act #612, which, in part, provided: "The County Board of Education shall fill any vacancy in the governing body of any school district." Then, in 1994, the General Assembly abolished the Spartanburg County Board of Education in Act #610. The following year, 1995, the General Assembly reinstated the Spartanburg County Board of Education but scaled back the county board's authority. Among the provisions in Act 189 of 1995 the General Assembly provided that "[a]ll other powers, if any, formerly possessed by the County Board of Education of Spartanburg County are devolved, and otherwise allocated, upon the seven boards of trustees of the local districts of Spartanburg County."

It would appear that the power to appoint a successor to fill the vacancy caused by Mr. Proper's death would now fall to the School District I Board of Trustees because (1) the County Board of Education was vested with that authority in 1988, (2) the power to fill a vacancy was not among the enumerated powers vested with the County Board when it was reinstated, so

(3) the power to fill a vacancy would fall within --other powers ... devolved ... upon the seven boards of trustees.” Filling a vacancy in this manner, while not unprecedented, is unusual in South Carolina. Please review the relevant legislation and provide me with your opinion as to who is vested with the legal authority to fill the vacancy on the Spartanburg County District I School Board of Trustees.

Law/Analysis

This Office agrees with your assessment. Our opinion to Richard Thompson, local counsel to the Anderson County Board of Education, addressed a similar circumstance where a school district board of trustees member died while in office. Op. S.C. Att’y Gen., 2020 WL 3619622 (June 22, 2020). Therein, the opinion discussed how South Carolina Code Section 59-19-60 provides that county boards of education fill vacancies in the membership of school district boards of trustees. It states that vacancies on a school board of trustees are filled “for the unexpired term by the county board of education in the same manner as provided for full-term appointments.” S.C. Code § 59-19-60 (emphasis added). While section 59-19-30 establishes a default manner of appointment, section 59-19-40 notes that where local law addresses the “appointment or election of school trustees in any school district or in any of the several counties of the State” the local law controls the manner and or duration of the appointment.

In Spartanburg County, a series of local laws abolished the county board of education and devolved most of its powers to the local school district boards of trustees. See 1995 Act No. 189 (“All other powers, if any, formerly possessed by the County Board of Education of Spartanburg County are devolved, and otherwise allocated, upon the seven boards of trustees of the local districts of Spartanburg County.”); 1998 Act No. 499 (“[T]he Spartanburg County Board of Education is abolished.”). As noted in your letter, one of the powers assigned to the county board included the filling of vacancies for the governing body of any school district. See 1988 Act No. 792, § 2. As a result, it appears that the authority to fill a vacancy occurring in the membership of a school district board of trustees in Spartanburg County rests with the school district board where the vacancy occurs. Because the local law does not call for a special election nor require that a successor be elected at the next general election, a person appointed by a district to fill such a vacancy in Spartanburg County would serve for the unexpired portion of the term of office.

Conclusion

As discussed more fully above, resulting from the abolition of the Spartanburg County Board of Education, it is this Office’s opinion that the authority to fill a vacancy on Spartanburg County District I School Board of Trustees now rests with the board itself. As described in your letter, this is an unusual, though not unprecedented, situation where the membership of a public body is authorized to appoint a member to serve in that same body. However, if the legislative

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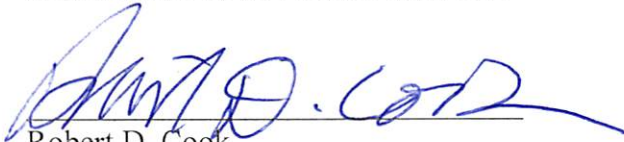
delegation disapproves, legislation could be introduced to vest appointment authority elsewhere or to require an election to fill such a vacancy.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General