



ALAN WILSON
ATTORNEY GENERAL

April 11, 2022

The Honorable Kevin L. Johnson
613 Gressette Senate Bldg
PO Box 142
Columbia, SC 29202

Dear Senator Johnson:

You are requesting an expedited opinion of this Office regarding whether a vacancy was created on the Clarendon County School District Board of Trustees when the Vice Chairperson of the Board was recently elected to the position of Mayor of a local municipality.

LAW/ANALYSIS

To provide some background, the Legislature enacted 2021 South Carolina Acts 106 (“Act”) in order to consolidate Clarendon County School District No. 2 and Clarendon County School District No. 4 into the Clarendon County School District (“School District”). The Act provides:

The Clarendon County School District must be governed by a board of trustees of nine members to be appointed initially by a majority of the Clarendon County Legislative Delegation. The nine members initially appointed by the legislative delegation after the effective date of this act must be qualified electors of Clarendon County, and these appointed members shall serve on the Clarendon County School District Board of Trustees until their successors are elected in school district elections conducted at the same time as the 2024 General Election and qualify.

Act, Section 2(A).

Pursuant to the Act, “the members of the consolidated school district board of trustees appointed after the effective date of this act shall take office on the date they take the oath of office. Act, Section 7(A). “In the event of a vacancy on the board occurring for any reason other than the

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expiration of a term, the vacancy must be filled for the remainder of the unexpired term through appointment by the county legislative delegation.” Act, Section 2(B).

The members of the School District’s board of trustees are granted certain powers and duties. See Act, Section 3(B). The Act also provides that “[t]he members of the Clarendon County School District Board of Trustees shall elect a chairman and other officers they consider necessary for terms that are coterminous with their appointed or elected terms of office.” Act, Section 3(A).

We believe that your question regarding the Vice Chairperson of the School District’s Board who was recently elected as Mayor involves dual office holding. The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).

Other relevant considerations for an office are:

whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

We have determined “numerous times that members of county school boards hold offices within the meaning of the dual office holding provision.” Op. S.C. Atty. Gen., 2011 WL 2214066 (May 19, 2011). We do not believe that members of the School District’s Board are any different, because their position, qualifications for appointment, duties, and tenure were all established by the Legislature. Furthermore, “[t]his Office has concluded on numerous occasions that one who serves as the mayor of a municipality would hold an office for dual office holding purposes.” Op. S.C. Atty. Gen., 2000 WL 1803616 (Oct. 16, 2000). We therefore believe that simultaneous service on the School District’s Board of Trustees and as mayor would constitute dual office holding.

In prior opinions, we addressed what steps must be followed if a dual office holding situation occurred:

When a dual office holding situation occurs, the law operates automatically to “cure” the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office held. Thus, the law operates automatically to create a vacancy in that first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See Walker v. Harris, 170 S.C. 242 (1933); Dover v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). Furthermore, actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless or until a court should declare such acts void or remove the individual from office. See, for examples, State Ex rel. Macleod v. Court of Probate of Collation County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Stob. 92 (S.C. 1848).

Op. S.C. Atty. Gen., 2007 WL 1651345 (May 9, 2007) (quoting Op. S.C. Atty. Gen., May 27, 2003).

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CONCLUSION

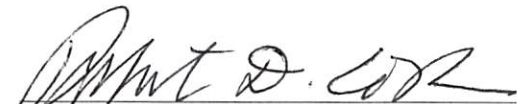
Because of the dual office holding, we believe that a vacancy was created on the School District's Board of Trustees when the board member was elected as mayor.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General