

1972 WL 25522 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 30, 1972

***1 Re: #269—Schools—Trustees/De Facto**

James A. Bell, Esq.
Attorney at Law
224 Parler Avenue
St. George, SC 29477

Dear Mr. Bell:

In answer to your request for advice relative to the Boards of Trustees in Dorchester County, the three-year terms and possibly the manner of election appear to be contrary to the general provisions of Section 21-224.1, Code of Laws of South Carolina, which would control in the absence of special legislation for Dorchester County. This section reads as follows:

When school districts are consolidated, the county board of education shall appoint, from within the consolidated district, five trustees to serve as trustees of the new district, two for a term of one year, two for a term of two years and one for a term of three years. Thereafter the successors of all such trustees shall be elected for a term of three years or be appointed as provided by law. (1952 Code § 21-224.1; 1951(47) 546.)

Any trustee holding office beyond the three years provided for in Section 21-224.1 would be a de facto trustee whose actions would continue to be valid and binding so long as performed in the prescribed manner. See 78 C.J.S., Schools, Section 113, De Facto Officers; see also [Welch v. Getzen](#), 67 S.E. 294, 85 S.C. 156 (1910) and [Dove v. Kirkland](#), 75 S.E. 573, 92 S.C. 313 (1912). Furthermore, it seems to be that there is additional confusion or uncertainty surrounding the intent or meaning of the last sentence of Section 21-224.1. For example, after the initial appointment by the county board for three years, would the positions automatically become elective, or does the phrase ‘be appointed as provided by law’ refer back to Section 21-222 to incorporate the appointing provision in the law, thus providing an option without the need for special legislation. The apparent ambiguity of Section 21-224.1 and apparent discrepancy between law and actual practice indicate a need for remedial education relative to the selection in terms of these district boards in Dorchester. I recommend that the county board continue to appoint the district boards as is the current practice until such time as this legislation can be enacted.

You also requested information concerning action of the Justice Department under the Voting Rights Act on act bearing Ratification No. 997, increasing the membership of the respective district boards from five to seven. The Justice Department has not taken any action in regard to this act as of yet; and, therefore, I would delay appointment of these additional members until receiving word from the Justice Department.

Please contact me if I can be of any further assistance.

Sincerely yours,

Hardwick Stuart, Jr.
Assistant Attorney General

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