

1972 WL 26144 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1972

*1 Mr. J. H. Nesbitt
Superintendent
?? Mill Schools
Post Office Box 369
Fort Hill, South Carolina 29715

Dear Mr. Nesbitt:

Thank you for your letter of April 29, 1972, asking the following with respect to the application of Section 21-4382, Code of Laws, 1962:

'If a person is elected to a six-year term and lives inside the corporate limits of the town and later during his term of office moves outside the corporate limits of the town, what would be his status? Should he resign? Should he serve the remainder of his term?

The statute to which you refer requires that certain of the trustees be residents of the corporate limits of the town and that a designated number of the trustees must be residents of the overall school district.

In the opinion of this Office, if a trustee moves outside the area from which he was elected, the appropriate authorities should take action to fill the vacancy. The reason for this is that when the trustee loses his residential qualifications, a 'vacancy is created. Such vacancy is not a physical vacancy, but one which exists in the sense that a successor should be chosen to replace him. The trustee involved should continue to hold the office until his successor has been chosen and has outlived for the reason that he continues in office at least in a de facto capacity, and his acts and doings in such capacity are valid and proper. He is not entitled to serve the remainder of his term, but, as indicated, the appropriate authorities should move to fill the vacancy created by his removal from the territorial limits from which he was elected.

If the school district has an attorney, this expression should be considered as unofficial, and the school district attorney's advice sought and adhered to by the Board.

With all best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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