



ALAN WILSON
ATTORNEY GENERAL

December 12, 2022

The Honorable George E. "Chip" Campsen, III
Member
South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Campsen:

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

Vacancies on the Charleston County School District Board of Trustees (Board) were traditionally governed pursuant to the Act of Consolidation, Act 340 of 1967. Under that act, vacancies were filled for the entire duration of an unexpired term by appointment by the Governor upon the recommendation of a majority or the Charleston County Legislative Delegation. In 1995, the Act of Consolidation was amended by Acts 160 and 161, which collectively required an election to be held at the next countywide or general election if a Governor's appointee was appointed to an unexpired term that exceeded two years. The Act of Consolidation was further amended in 2020 by Act 182, which required district trustees to be elected from single-member districts. That act removed the provision concerning the Governor's appointment to fill vacancies, thereby requiring vacancies to be filled pursuant to the general law.

In light of a recent vacancy on the Board, I am respectfully requesting an expedited opinion letter to address the following two questions:

1. What applicable general law or laws may govern a vacancy on the board; and
2. If an applicable general law requires that a vacancy must be filled by a special election, then who or what entity is vested with the authority to call for the special election?

In addressing these questions, please assume the following facts:

On Thursday, November 10, 2022, a written communication from the incumbent office holder of District 6- and winner of the November 8, 2022 general election for the subsequent District 6 term- was sent to the Charleston County Board of Elections and Voter Registration, which states, "This letter is to officially withdraw from the Charleston County School Board election for 2022 term. This seat for the District 6 seat I regretfully withdraw from as of October 2022 but more officially as of today. Thank you for the opportunity to serve." The members elected on November 8, 2022, were sworn into office the following Friday, November 18, 2022, with the exception of the winner of the District 6 seat.

Law/Analysis

Given that your letter requests an expedited response, this opinion should be read in that context. Based on the analysis discussed more fully below, it is this Office's opinion that a court would hold (1) the board member's letter operates as a written resignation under S.C. Code § 8-1-145 and her seat is vacant; (2) the vacancies on the Charleston County School District Board of Trustees ("CCSD") are filled by special election according to the provisions of S.C. Code § 7-13-190; and (3) S.C. Code § 59-19-60 (Supp. 2022) requires the Governor to call for the special election. It must be emphasized that these conclusions are not free from doubt. Certainly, as a matter of first impression, the amendments to relevant local laws as well as the general law are open to interpretation. However, under the circumstances, the construction herein appears to be the most reasonable. Of course, only a court can ultimately determine how this specific vacancy on the CCSD should be filled.

The initial question presented asks for the general law or local laws governing vacancies on the CCSD. The analysis is somewhat complicated, but this opinion will summarize the history and current state of the general law governing school district boards of trustees and the local laws specific to the CCSD. This Office's June 22, 2020 opinion to Richard E. Thompson examined an apparent conflict between the general law and the local laws for Anderson County school district boards of trustees regarding the filling of vacancies. See Op. S.C. Att'y Gen., 2020 WL 3619622 (June 22, 2020). At the time of that opinion, section 59-19-60 stated, "Vacancies occurring in the membership of any board of trustees for any cause shall be 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(2020) (emphasis added). The opinion explained that this statute is read in context with the related statutes in the same chapter addressing the appointment of school district trustees.

First, Section 59-19-30 authorizes county boards of education to appoint successor trustees to school district boards. Next, this appointment power’s application is limited by Section 59-19-40 which states that Section 59-19-30 “shall neither repeal, supersede nor annul any special act providing for the appointment or election of school trustees in any school district or in any of the several counties of the State.” As is discussed above, there are such special acts providing for the appointment of school trustees in the school districts of Anderson County. Therefore, the manner of full-term appointments under 59-19-30 and vacancy appointments in 59-19-60 should not be read to prevail over the [relevant local act].

Op. S.C. Att’y Gen., 2020 WL 3619622, at 2. A majority of school district boards of trustees also have local laws addressing the election of members and providing a mechanism for vacancy appointment or an election. It should be noted that the default mechanism, in the absence of a relevant local law, for filling a vacancy was for a county board of education to appoint successor school district members under section 59-19-30. However, many, though not all, county boards of education have been abolished with their powers devolved onto the school districts, or, in some instances, the school districts were abolished, and the county boards of education acts *ex officio* as the school district. See e.g. 1970 Act No. 977, § 3 (Beaufort County Board of Education “shall ex-officio be and constitute the Board of School Trustees of the School District ...”). Generally, this default statutory scheme in the general law governing vacancy appointments only applied to a limited number of school districts that (1) still maintained the county board of education and school district structure, and (2) did not have a local law directing a different process.

In 2022, the General Assembly amended section 59-19-60¹ and removed all reference to county boards of education. As is discussed above, the majority of school districts are no longer “subject to the supervision and orders of the[ir respective] county board of education.” S.C. Code § 59-19-10. Act No. 138 of 2022 addressed the obsolete removal provision in S.C. Code § 59-19-60, which placed removal power with the county boards of education, by reassigning that authority to the Governor. Section 59-19-60 now reads:

¹ Section 59-19-60 read in full:

School district trustees shall be subject to removal from office for cause by the county boards of education, upon notice and after being given an opportunity to be heard by the county board of education. Any such order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee, and any such trustee shall have the right to appeal to the court of common pleas, as provided in Section 59-19-560. Vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term by the county board of education in the same manner as provided for full-term appointments.

Notwithstanding any provision of law to the contrary, school district trustees who wilfully commit or engage in an act of malfeasance, misfeasance, chronic unexcused absenteeism, conflicts of interest, misconduct in office, or persistent neglect of duty in office, or are deemed medically incompetent or medically incapacitated, are subject to removal by the Governor upon any of the foregoing causes being made to appear to the satisfaction of the Governor. Before removing any such officer, the Governor shall inform him in writing of the specific charges brought against him and give him an opportunity on reasonable notice to be heard. Vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term in the same manner as provided for full-term appointments.

S.C. Code Ann. § 59-19-60 (Supp. 2022). While the statute explicitly assigns removal power to the Governor, the provision for filling vacancies merely struck reference to the county boards of education. *Id.* The plain language of the statute does not state where the power to fill a vacant seat now lies.

As a matter of first impression, we must interpret the vacancy provision in S.C. Code § 59-19-60 according to the rules of statutory construction. It should be emphasized that the General Assembly’s intent is the primary consideration in interpreting the terms of a statute. See *Kerr v. Richland Mem’l Hosp.*, 383 S.C. 146,148, 678 S.E.2d 809, 811 (2009) (The primary rule of statutory construction is to “ascertain and give effect to the intent of the legislature.”). Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Alternatively, “where a statute is ambiguous, the Court must construe the terms of the statute.” *Wade v. Berkeley Cnty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). Further, “[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *State v. Henkel*, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015). Based on these principles, we examine the text of the 2022 amendment to S.C. Code § 59-19-60 and related local laws to determine what body or office is authorized to fill a vacancy on the CCSD.

As stated above, the only change to the vacancy provision was to strike “by the county board of education” from the last sentence of the statute. It appears, then, that the legislative intent was to remove the county boards of education from filling vacancies on school boards of trustees as the default position in the general law. The vacancy provision continues to state that vacancies are “filled for the unexpired term in the same manner as provided for full-term appointments.” *Id.* (emphasis added). Again, the provisions for full-term appointments are codified at S.C. Code § 59-19-30 and assigned to “the county boards of education ... [to be made] during the first week of April in each year.” Clearly, the General Assembly did not intend to strike the county boards of education from the vacancy provision in section 59-19-60 only to have the county boards of

education fill the vacancy according to section 59-19-30.² Presumably, because section 59-19-40 provides that local acts “providing for the appointment or election of school trustees in any school district or in any of the several counties of the State” prevail over the provisions of 59-19-30, the General Assembly intended to continue to refer to local legislation that establishes the procedure for filling a vacancy.

In 1967, Act No. 340 created the school district of Charleston County and abolished the county board of education of Charleston County. Therein, the second paragraph of section 2 provided for filling of a vacancy by appointment. “In the event of a vacancy on the board, due to cause other than expiration of term, the vacancy shall be filled for the remainder of the unexpired term by appointment by the Governor upon the recommendation of a majority of the Charleston County Legislative Delegation.” *Id.* In 1995, the act was amended twice to require an election be held if a vacancy appointment would last longer than two years. The first act, Act No. 160, required the election to be held at the next general election.

In the event of a vacancy on the board, due to cause other than expiration of term, the vacancy shall be filled for the remainder of the unexpired term by appointment by the Governor upon the recommendation of a majority of the Charleston County Legislative Delegation. Notwithstanding any appointment by the Governor, an election must be held at the time of the next ensuing general election to elect a member when the appointee has been appointed to an unexpired term which exceeds two years.

1995 Act No. 160, § 2. The second act, 1995 Act No. 161 amended the local act to permit such elections to be held at either the next general election or the next countywide election.³ It must be pointed out that Act 161 left out the sentence establishing the Governor appoints members upon the recommendation of the county delegation until next applicable election. This Office cannot determine whether the sentence was intentionally struck or an inadvertent omission, but newspaper

² If the power to fill a vacancy is held to remain with the county board of education, that power would now be vested in the CCSD itself since the powers of the county board of education were devolved onto it. See 1967 Act No. 340, § 5; see also *Op. S.C. Att’y Gen.*, 2021 WL 6104713 (December 16, 2021) (opining the authority to fill a vacancy on Spartanburg County District I School Board of Trustees rests with the board itself).

³ 1995 Act No. 161, § 1.

Upon the expiration of the term of each member, each successor must be a qualified elector of the same area and must be elected in the general election preceding the expiration date by the qualified electors of the entire county for a term of four years and until a successor is elected and qualifies. Notwithstanding any appointment by the Governor, an election must be held at the time of the next ensuing general election and/or next ensuing countywide election to elect a member when the appointee has been appointed to an unexpired term which exceeds two years. Nothing in this paragraph may be construed to alter the staggering of terms established by this section.

articles provided as background for this opinion show that vacancies continued to be filled by appointment after the effective date for Act 161.

Finally, as described in your letter, 2020 Act No. 182 (H.B. 5034) was enacted to require that each CCSD member be elected from single-member districts. Section 1 of Act 182 stated it was amending Section 2 of Act 340 of 1967 which contained both the election and vacancy appointment provisions. However, Act 182 does not mention vacancies. Section 4 of Act 182 expressly repealed all inconsistent local acts and described the General Assembly’s intent in enacting the legislation. “[I]t being the intent of the General Assembly to have this act and the general law be the only provisions of law governing the election of members of the Charleston County School District Board of Trustees.” 2020 Act No. 182, § 4. The May 12, 2020 Senate Journal entry at page 30 shows the last amendment to Act 182 struck through the vacancy appointment provisions. Ultimately, while implied repeal is disfavored, it appears the Legislature intended to repeal the vacancy appointment provisions.⁴

Assuming the vacancy appointment provisions for CCSD are repealed and the General Assembly intended for the general law to apply, it must be determined what general law applies to filling a school district vacancy when the relevant local law is silent. Prior to the 2022 amendment to section 59-19-60, the general law provided county boards of education filled such vacancies. See S.C. Code §§ 59-19-30, -60 (2020). Presently, the county board of education is removed entirely from section 59-19-60 in regard to both removal and filling of vacancies.

While the current text of 59-19-60 is ambiguous where the authority to fill a vacancy lies, a court would likely hold, in the absence of controlling local legislation, the Governor is charged to fill the vacancy. In relevant part, the title of the act amending 59-19-60 reads “An Act ... to provide the Governor may fill trustee vacancies.” The text of the statute does not clearly assign the Governor authority to fill a school district vacancy, but, where there is no contrary mechanism in the local law, the title of the Act demonstrates that the legislature intended to vest some power in the Governor to address vacancies.

To the present questions, because local law requires all members of the CCSD to be elected and section 59-19-60 requires vacancies to be “filled for the unexpired term in the same manner as provided for full-term appointments,” a court would likely hold that Governor is vested with authority to call for an election to fill the vacancy. As described in your letter, it is likely a court would find the November 10, 2022, written communication from the board member acted as a resignation letter with an immediate effective date.⁵ S.C. Code § 8-1-145(A) establishes an office

⁴ See *Indep. Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 33, 61 S.E.2d 399, 404 (1950) (discussing the “distinction between an act amendatory of, or cumulative to, existing law and one undertaking to exhaust the field of the subject.”).

⁵ Because this Office cannot find facts in an opinion, for purposes of analysis, we will assume the facts as presented in the request letter. See *Op. S.C. Att’y Gen.*, 2006 WL 1207271 (April 4, 2006) (“Because this

holder "may submit a written irrevocable resignation from that office which is effective on a specific date." Subsection(B) states an "election must be held in accordance with the provisions of Section 7-13-190 [special elections of fill vacancies in office] or other applicable law to fill the office."⁶ Again, there does not appear to be an applicable provision in the local law addressing vacancies. Therefore, a court would likely order the vacancy on the CCSD to be filled by special election according to the provisions of S.C. Code § 7-13-190.

Conclusion

Based on the analysis discussed more fully above, it is this Office's opinion that a court would hold (1) the board member's letter operates as a written resignation under S.C. Code § 8-1-145 and her seat is vacant; (2) vacancies on the Charleston County School District Board of Trustees ("CCSD") are filled by special election according to the provisions of S.C. Code § 7-13-190; and (3) S.C. Code § 59-19-60 (Supp. 2022) requires the Governor to call for the special election. There have been recent changes to both the local law governing vacancies on the CCSD and to S.C. Code § 59-19-60, governing removal and filling of vacancies on school district boards of trustees. As matters of first impression, these conclusions are not free from doubt.

We must also note that where a school districts local law provides a mechanism for filling a vacancy among its members, a court would likely find those provisions remain controlling. This opinion should be understood to address only the scenario presented, where there is a local law requiring elections for members of the school district, but not addressing vacancies. Of course, only a court can ultimately determine how this specific vacancy on the CCSD is filled. Finally, legislative clarification may be warranted to specify what method the General Assembly intended to fill a vacancy on a school district board of trustees in section 59-19-60. Because of the absence of clarity in these various statutes, we believe it would be prudent to obtain the guidance of a court in this matter.

Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions").

⁶ This Office is aware of a circuit court order applying the written revocation provision in S.C. Code 8-1-145 to a school district board of trustees member. The Honorable Judge J. Cordell Maddox, South Carolina Tenth Judicial Circuit Court, held that "due to the effective resignation of Shirley, the Court finds there to be a vacancy and orders a special election in accordance with S.C. Code Ann. § 8-1-145." Phillip ASHLEY, Kevin Craft, and Jimmy Ouzts, v. Anderson County School District Two Board of Trustees, 2019-CP-04-01118 (Order, Nov. 15, 2019). A later order removed the citation to section 8-1-145 to and instead "order[ed] the vacancy be filled pursuant to the relevant laws of South Carolina." Phillip ASHLEY, Kevin Craft, and Jimmy Ouzts, v. Anderson County School District Two Board of Trustees, 2019-CP-04-01118 (Order, Dec. 23, 2019). It is this Office's understanding the second order was issued to have the vacancy filled by appointment as required by relevant local law.

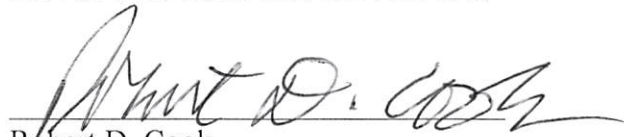
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Sincerely,

A handwritten signature in blue ink that reads "Matthew Houck". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in black ink that reads "Robert D. Cook". The signature is cursive and written over a horizontal line.

Robert D. Cook
Solicitor General