



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 6, 1995

The Honorable Molly M. Spearman
Member, House of Representatives
335-D Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Spearman:

By your letter of April 3, 1995, to Attorney General Condon, you have sought an opinion as to how a vacancy on the Saluda School District 1 Board of Trustees is to be filled. You advised that a trustee died recently; his was a four-year term which would expire November 1996. You further advised that Saluda District 1 is presently governed by a seven-member board elected according to a single-member district plan approved several years ago after settlement of a voting rights action. You inquired as to the proper method to fill this vacancy.

Act No. 1244 of 1972, in section 11, provides for membership on the Board of Trustees of School District No. 1 in Saluda County, as well as voting areas. Section 11 also provides: "Vacancies on the board shall be filled by appointment of the Governor upon recommendation of the resident members of the county legislative delegation for the unexpired term." We have not located a more recent act of the General Assembly, relative to Saluda District No. 1, which would provide a means for filling a vacancy on the board of trustees.

We have examined the Order of the Honorable G. Ross Anderson, Jr., United States District Judge, dated October 20, 1988, in Holloway, et al. v. Board of Trustees for School District Number One in Saluda County, South Carolina, et al., C.A. No. 9-88-638-3, in the United States District Court, District of South Carolina, Greenwood Division. The Order enjoined elections at large for members of the Board of Trustees and created a

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seven-member board to be elected from single-member districts as drawn in the Order. The only apparent provision therein pertinent to filling a vacancy is on page 3 of the Order, in part (5), which states: "Any trustee who moves his residence from the district that he represents shall automatically terminate his office, and the vacancy shall be filled as presently provided by law." There is no indication within the Order as to the present provision of law, however.

Other statutory provisions have been examined to determine their possible applicability to this situation but have been rejected. Section 7-13-190, S.C. Code Ann. (1993 Cum. Supp.), provides a timetable for special elections to fill vacancies in elective offices when such vacancy occurs by reason of death, resignation or removal and the vacancy in office is one which is filled by a special election to complete the term of office; this statute is not applicable here because no authority has been located which would allow for a special election to be held to fill the vacancy. Section 59-19-60 provides a means for filling vacancies on boards of trustees; this statute appears to be inapplicable for several reasons, in that Act No. 1244 of 1972 is a more recent expression of legislative will as to filling a vacancy than is §59-19-60, Feldman v. South Carolina Tax Com'n, 203 S.C. 49, 26 S.E.2d 22 (1943)[last expression of the legislature is the law]; furthermore, §59-19-60 is a general law, whereas Act No. 1244 of 1972 is an act specific to Saluda District No. 1. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980)[in case of a conflict between a general statute and a specific statute, the specific statute prevails]. Sections 1-3-220 and 4-11-20 provide mechanisms to fill vacancies in county offices, but a trustee on the Saluda District No. 1 board would most probably not be considered a county officer since the board has less than county-wide jurisdiction.

Based on the foregoing, I am of the opinion that the cited portion of section 11 of Act No. 1244 of 1972 would provide the mechanism for filling a vacancy on the board of trustees of Saluda District No. 1. The vacancy referenced above would be filled by appointment of the Governor upon the recommendation of the resident members of the county legislative delegation for the unexpired term.

I understand that inquiry has been made of the Ethics Committee of the House of Representatives as to the propriety of your role in this decision, considering the requirements of the Ethics, Government Accountability, and Campaign Reform Act of 1991. I trust that any questions remaining unanswered by this informal opinion will be resolved by the House Ethics Committee.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the

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Attorney General nor officially published in the manner of a formal opinion. I trust that it satisfactorily responds to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General