

The State of South Carolina



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April 7, 1993

The Honorable Eugene C. Stoddard
Chairman, Committee to Screen Candidates
for Boards of Trustees
422-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Stoddard:

You have advised that in 1992, the Committee to Screen Candidates for Boards of Trustees of State Colleges and Universities screened candidates and the General Assembly re-elected South Carolina State University board members in accordance with S.C. Code Ann. § 59-127-20. The election was held on May 13, 1992. Senate Bill 1523 was introduced on April 28, 1992 and was signed into law by the Governor on June 1, 1992; this enactment amended § 59-127-20 and gave direction for this election after the fact.

The screening committee wishes to comply with the amendment to § 59-127-20 in the most legal and equitable manner, you have further advised. You asked whether the two members elected last year should be counted as odd-numbered at-large seats and for future reference assign them as seats number 7 and 9, with the third odd-numbered at-large seat being elected this year for a remaining three-year term. You asked whether doing this would put the General Assembly in compliance with the law as amended in 1992.

Section 59-127-20 was amended by Act No. 392 of 1993 to increase the number of trustees of South Carolina State University from nine to thirteen, to reduce the term of office from six years to four years, and to provide for election of the trustees. Each position on the board is to constitute a separate office, with the seats to be numbered consecutively, one for each congressional district and seats 7 through 12 at-large; the Governor or his designee is to occupy seat 13. Part (B) of amended § 59-127-20 now provides:

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Beginning with members elected to the board during 1992, terms of members are four years. Members elected to the board during 1992, whose terms begin July 1, 1992, must be elected to the odd numbered at-large seats. Members elected to the board during 1993, whose terms begin July 1, 1993, must be elected for the odd numbered congressional district seats for terms of four years. After 1993 as the terms of current members expire, members must be elected for odd numbered seats first until all seats are filled and then even numbered seats until all seats are filled.

Unfortunately, the legislative session ended a few days after this legislation took effect, so that only two of the three anticipated positions were filled.

As with any legislative act, the primary objective is to determine the legislative intent and effectuate that intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Based on § 59-127-20, we observe that two of the required three members were elected to the board for four-year terms ending June 30, 1996; thus, one more member theoretically should have been elected last year, so that three odd-numbered at-large seats would have been filled.

As stated in Maner v. Maner, 278 S.C. 377, 296 S.E.2d 534 (1982), "Generally, an office created by statute comes into existence immediately upon the statute taking effect." 278 S.C. at 383. Thus, even though the third odd-numbered at-large position was not filled, it came into existence in 1992 for a four-year term. The term of office is distinguishable from the tenure of the office holder. Heyward v. Long, 178 S.C. 351, 183 S.E. 145 (1935). To carry out legislative intent in amending § 59-127-20, in 1993 the screening committee could screen candidates for, and the General Assembly could elect, a member of the board to serve in the third odd-numbered at-large seat, in addition to the other members to be elected in 1993, to serve the remainder of the four-year term.

The statute does not specify the means by which the legislature is to determine which trustee is to occupy which odd-numbered at-large seat. Thus, the legislature could use any reasonable means it wishes to designate who is to occupy seats 7, 9, and 11 on the board of trustees.

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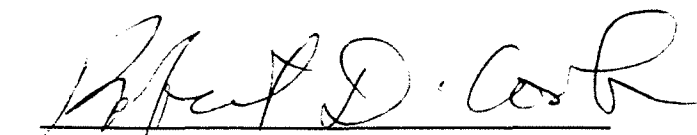
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:


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