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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 6, 1995

John E. Tindal, Superintendent of Schools
Orangeburg School District No. 1
Post Office Box 337
Springfield, South Carolina 29146

RE: Informal Opinion

Dear Mr. Tindal:

You had written to Attorney General Condon seeking an opinion as to whether Orangeburg County School District One would be compelled to pay for legal expenses incurred by the Orangeburg County Election Commission which resulted from a ruling rendered by the Orangeburg County Election Commission in a recent run-off school board election. The expenditures in question were the results of a candidate's protest of the canvassing of election results by the Orangeburg County Election Commission. You further observed that the protest was not upheld at the appellate level, local or state.

By Act No. 256 of 1951, the boards of trustees of the Orangeburg County school districts were created. The Orangeburg County Board of Education was given the responsibility to elect or appoint the members of the boards of trustees as might be applicable. Section 3 of Act No. 256 provided for a special election on the dates specified. Persons desiring to offer for the position of trustee were to file in writing with the county board of education their intention to do so, not less than fifteen days before the time fixed for holding the election. The county board of education would appoint the members of the boards of trustees unless a number in excess of the vacancies on a board indicated their intention to be candidates. If the number of candidates exceeded the number of vacancies, an election would be held by the county board of education. The county board was to give notice by publication, determine the polling places to be used, prepare the ballots, appoint election managers, receive election returns, and declare the election results.

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The Orangeburg County Board of Education was abolished by Act No. 201 of 1991. Section 1 of that act provided as follows:

Notwithstanding any other provision of law, the Orangeburg County Board of Education is abolished effective July 1, 1991, and the powers and duties of that board are devolved upon the respective boards of trustees of the school districts of the county except that:

(1) those powers and duties related to the election of trustees of the boards for the school districts of the county devolve upon the Orangeburg County Election Commission;

(2) those powers and duties for and related to food service supervision and attendance supervisors devolve upon and must be carried out by a consortium formed by the school districts in the county which is authorized by this act to receive the state appropriation for the county for these services. [Emphasis added.]

The Orangeburg County Election Commission organizes as the Orangeburg County Board of Canvassers pursuant to S.C. Code Ann. §7-17-10 and proceeds to canvass the votes and make statements as to the nature of such votes pursuant to S.C. Code Ann. §7-17-20, following an election. The Election Commission or Board of Canvassers, by whichever name it may be known at a given time, as any administrative agency, derives its authority and jurisdiction from the statutes creating it; its powers include those expressly granted by statute and those powers necessarily and reasonably implied therefrom. 1 Am.Jur.2d Administrative Law §§72, 73, 91. One such statute is S.C. Code Ann. §7-17-30 (1994 Cum. Supp.), which provides in part that "[t]he county boards [of canvassers] shall decide all cases under protest or contest that may arise in their respective counties in the case of county officers and less than county offices." Thus, in addition to the powers and duties formerly in the Orangeburg County Board of Education but assigned to the Orangeburg County Election Commission, the Code of Laws also assigns certain tasks to the Election Commission with respect to the election process. With respect to the protest or contest of election results, no responsibility appears to have been left to the various school districts in Orangeburg County.

The enabling legislation which reposes the powers and duties aforementioned in the County Election Commission does not provide for costs. It is observed that in section 1 of Act No. 201 of 1991, the General Assembly did make some provision for appropriations which would ordinarily have gone to the school districts, by providing that the envisioned consortium would receive state appropriated funds. The General Assembly could have provided that the school districts pay the costs of the election but apparently did not keep any of the responsibilities for the conduct of the election with the school

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districts. It is my understanding that the county election commissions ordinarily pay the costs of an election unless a statute or agreement between the election commission and a political subdivision on whose behalf the election is being conducted has been reached; I am told that such is not the case here. Because the enabling legislation did not address the issue of costs of the election, I am of the opinion that the burden of the costs of the election protest in question would be considered a part of the powers and duties to conduct the election which have been reposed in the Orangeburg County Election Commission.¹

Based on the foregoing, I am of the opinion that the Orangeburg County Election Commission would assume responsibility for payment of expenses incurred in the election protest or contest relative to a recent run-off school board election. I must caution that this conclusion is by no means clear or free from doubt, due to the fact that the General Assembly has not specifically addressed the issue other than in §7-23-40 (see footnote 1). To resolve any doubt as to the matter, a declaratory judgment might be sought; or clarification by the General Assembly might be considered, though such clarification would most probably not affect the election under consideration herein.

This letter is an informal opinion only. It has been written by a designated Senior 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 Attorney General nor officially published in the manner of a formal opinion.

¹See also S.C. Code Ann. §7-23-40, which provides:

The governing bodies of the several counties shall audit and pay all accounts for necessary expenses incurred by the commissioners and managers of election for stationery, the making of election boxes, rents and similar expenses in elections held in this State.

Payments for transcription of hearings and copying costs could be considered "similar expenses."

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General