



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 29, 1997

The Honorable Daniel T. Cooper
Member, House of Representatives
P.O. Box 160
Williamston, South Carolina 29697

Re: Informal Opinion

Dear Representative Cooper:

Your recent opinion request has been forwarded to me for reply. A number of questions are raised regarding the Boards of Trustees of the School Districts of Anderson County.

The boards of trustees of the school districts of Anderson County are provided for by Act No. 509 of 1982, as amended. Pursuant to Section 1 of the Act, the school districts in Anderson County shall be managed and controlled by boards of trustees, the members of which shall be residents of their districts and elected by the qualified electors thereof.

The first question concerns the proper number of members serving on the board of trustees. Section 4 of the Act provides the manner in which the boards are to be constituted. This section provides:

The boards in the several districts shall be constituted as follows:

- (1) In those districts having a total enrollment in all elementary and high schools within the district of less than three thousand pupils, the board of trustees shall consist of five members;

(2) In those districts having a total enrollment in all elementary and high schools within the district of three thousand pupils, or more, but less than six thousand pupils, the board of trustees shall consist of seven members;

(3) In those districts having a total enrollment in all elementary and high schools within the district of six thousand pupils, or more, the board of trustees shall consist of nine members.

The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Where the terms of a statute are clear, the court must apply those terms according to their literal meaning. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d 890 (1995). Use of the word "shall" in a statute generally connotes mandatory compliance. S.C. Dept. of Highways and Public Transportation v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986).

Since the use of the word "shall" connotes mandatory compliance, the number of members on the board of trustees must be determined by the total enrollment in all elementary and high schools within the district in strict accordance with the provisions of Act 509 of 1982. For example, in a district having a total enrollment in all elementary and high schools of six thousand or more pupils, the board of trustees must consist of nine members.

The second question is at what time do the terms of office of newly elected members of the board of trustees begin. Section 5 of Act No. 509 provides that the terms of office of school trustees of Anderson County shall expire on December thirty-first following the election of their successors in the general election. In addition, Section 9 of Act No. 509 provides that the trustees shall assume office on January first. However, in this situation, another statute must also be analyzed. Section 59-19-315 of the South Carolina Code of Laws provides that "[t]he term of office of every elected trustee of a school district must commence one week following certification of his election."

A situation virtually identical to the one presented here was addressed in an Opinion dated July 16, 1985. In that Opinion, the issue was whether Act No. 544 of 1982, which provided that "[t]he term of office of each trustee shall be four years to commence on the first day of January next following the election" controlled over Section 59-19-315. This Office concluded that the use of the word "every" and the use of the mandatory word "must" indicated that the legislature intended that the general provisions

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of Section 59-19-315 were to be controlling with respect to the commencement of the term of office of a school trustee. The effect of this conclusion was to change the time of commencement of the term of office from the first day of January following the election to one week following the certification of the election. But see Op. Atty. Gen. dated December 19, 1986 (where local legislation regarding a county's school trustees was passed after the passage of Section 59-19-315, the local legislation may be considered a controlling exception).

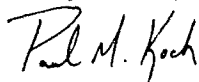
The conclusion reached in the July 16, 1985 opinion would be applicable here as well and, therefore, Section 59-19-315 would govern the commencement of the term of office. Accordingly, the term of office would begin one week following certification of the election.

The third question concerns the proper method of filling a vacancy in the board of trustees which occurs prior to the expiration of the term of office. Pursuant to Sections 3 and 5 of Act No. 509, if there is a vacancy in the board of trustees, a successor shall be appointed by the County Board of Education for the unexpired portion of the term.

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 Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General