

# The State of South Carolina



## Office of the Attorney General

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October 4, 1991

The Honorable John A. Martin  
Senatorial District No. 17  
203 Gressette Building  
P. O. Box 142  
Columbia, SC 29202

Dear Senator Martin:

Attorney General Medlock has referred your recent letter to me for reply. You have stated that the Act bearing ratification number 159 which revised the membership of the Board of Trustees for the Fairfield County School District has been precleared by the Justice Department. You have inquired what entity can set the date for the initial election. Section 3 of the Act provides in part that

[t]he election of the initial Board must be held in a special nonpartisan election in 1991 to be conducted as provided by law for special elections beginning from the date the United States Department of Justice gives preclearance to this Act.

Under the provisions of the Act the election has been called; therefore, only the date of the election has to be set. The Act established that the initial election would be conducted as a special election. There is no specific statute which establishes election dates for this election.

Section 7-13-190 of the Code provides the procedures and election dates for a special election to fill a vacancy created by death, resignation or removal. Although the election of the initial Fairfield Board of Trustees is not an election to fill such a vacancy these timelines would appear to be logical dates to follow in order to call a special election. If this statute is followed no entity will be required to perform any function to set the election other than the manual counting of the dates

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established in the statute. As the statutes are silent as to who should do this counting, it would appear it could be done by the county election commission or the school board or the county attorney or any other appropriate authority.

However, in the letter of July 12, 1991, which submitted the Act to the Justice Department for review it is stated that someone in this Office

. . . spoke with Mr. Sam Arnette, Director of the Fairfield County Election Commission which will conduct the election, . . . He said they will put a notice in the county newspaper as soon as we receive word of this Act's preclearance. The election will be set for the first Tuesday which falls at least 75 days after preclearance of the Act. Because Fairfield County has a weekly newspaper, and the election commission will have to get the notice to the paper a week before it goes in, the election date has been scheduled as described above.

This statement appears to contemplate a different schedule for conducting the election than the one set out in Section 7-13-190. The law is also silent as to who can set the election dates not provided for in Section 7-13-190. Although it is not clear it would appear as a general rule that the authority which would have the authorization to call the election would also be the authority to set the dates; i.e., the school board. However, should they fail to provide for the election the Governor could call the election and set the dates by statute. S.C. Code Ann. Section 7-13-1170 (1991).

It should also be noted that the September 13 letter from the Justice Department specifically stated that the schedule for the special election would have to be submitted for preclearance.

Sincerely,



Treva G. Ashworth  
Senior Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in cursive script that reads "Robert D. Cook". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT D. COOK  
Executive Assistant for Opinions