

The State of South Carolina



Office of the Attorney General

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August 18, 1989

The Honorable Juanita M. White
Member, House of Representatives
Route 1, Box 184-A
Hardeeville, South Carolina 29927

Dear Representative White:

In a letter to this Office you indicated that a member of the Beaufort County Board of Education has resigned and a question has been raised as to how the vacant seat will be filled. It is my understanding that the member had been elected in November, 1988 for a four year term which commenced in January, 1989.

Pursuant to Act No. 589 of 1986, provisions were made for the election of members of the Beaufort County Board of Education for four year terms of office. Section 1 of the Act states:

(t)he term of a member commences on January first next following his election. If a vacancy occurs and the remainder of the term exceeds twenty-six months, the office must be filled at the next general election. If the unexpired term is less than twenty-six months, the office must be filled by appointment by the Governor upon the recommendation of a majority of the legislative delegation representing Beaufort County.

Act No. 253 of 1987 further revised the manner of electing members of the Board by providing for the election of certain members from single-member districts as well as the election of members at large. While two year terms of office were established for certain specified districts and one member elected at large, four year terms were again specified for the remaining members. 1/ Again,

1/ Two year terms were established for the members from Beaufort District 2, Hilton Head District 4, St. Helena District 5 and one member elected at-large.

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you referenced that the seat you are questioning was for a member elected for a four year term which commenced in January, 1989. Section 3 of the Act states in part "(v)acancies occurring on the board for any reason must be filled in the manner provided by law."

As to such vacancy, pursuant to the provisions of Act No. 589, inasmuch as the remainder of the four year term which commenced January 1, 1989 exceeds twenty-six months, "... the office must be filled at the next general election." No provision is made for an interim appointment pending such election. As referenced, the General Assembly addressed the matter of vacancies on the Board in 1986 and again in 1987 and specifically set forth the manner in which any such vacancies should be filled. Therefore, this is not a situation such as noted in prior opinions of this Office where in light of the absence of a specific statute setting forth the manner of filling a vacancy, reference was made to a general provision, Section 1-3-220 of the Code, which provides for the appointment by the Governor to fill vacancies in county offices. See: Ops. Atty. Gen. dated July 11, 1986, March 16, 1983, December 1, 1970. Provision for an interim appointment was only authorized for a vacancy where the remainder of the term is less than twenty-six months. Therefore, it is apparent that the better reasoning supports the conclusion that the General Assembly did not intend for an interim appointment in the situation where a vacancy occurs and the remainder of the term exceeds twenty-six months. In such situation the vacancy would be filled at the next general election.

If there are any questions, please advise.

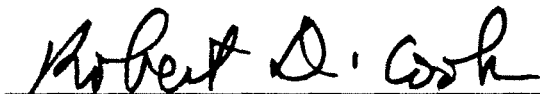
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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