

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

December 7, 1987

The Honorable H. E. Pearce, Jr.
Member, House of Representatives
404 39th Avenue
Myrtle Beach, South Carolina 29577

Dear Representative Pearce:

By your letter of December 3, 1987, you have advised that an individual has been nominated by the legislative delegations comprising the Fifteenth Judicial Circuit to serve on the South Carolina State Board of Education. You have asked whether this appointment has become official so that the legislative delegations may not reconsider the appointment.

Section 59-5-10, Code of Laws of South Carolina (1976), provides for the State Board of Education and prescribes an election procedure. The statute provides in relevant part:

When the election is completed, the chairman and secretary of the joint county legislative delegations of each circuit shall immediately transmit the name of the person elected to the Secretary of State who shall forthwith issue to such person, after he has taken the usual oath of office, a certificate of election as a member of the State Board of Education. The Governor shall thereupon issue a commission to such person

...

This Office has been advised that the name of the individual selected by the joint legislative delegations has been submitted to the Secretary of State and the Governor. 1/

1/ Because this Office is not authorized to make factual determinations, Op. Atty. Gen. dated December 9, 1983, this Office must assume as true the facts as presented for purposes of this opinion.

The Honorable H. E. Pearce, Jr.
Page 2
December 7, 1987

The general rule is stated in 63 Am.Jur.2d Public Officers and Employees § 113 that "[a]n appointment to office is final and complete when the last act of the appointing authority has been accomplished. At this stage of completion, the appointment cannot be reconsidered and revoked" See also Alleman v. Dufresne, 17 So.2d 70 (La. Ct. App. 1944); Thorne v. Squier, 264 Mich. 98, 249 N.W. 497 (1933); Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803); Annot., 89 A.L.R. 132. Because the joint legislative delegations completed their statutorily required actions by forwarding the name of the selected individual to the Secretary of State and the Governor, the appointment of the individual would be deemed to be final and complete and, therefore, not subject to reconsideration. 2/

In conclusion, it is the opinion of this Office that once an individual has been selected for appointment to the South Carolina State Board of Education by the appropriate joint legislative delegations and his name has been transmitted to the Secretary of State as required by Section 59-5-10 of the Code, the appointment has become official so that reconsideration of the appointment by the joint legislative delegations would be inappropriate.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

2/ Once the name of the selected individual has been transmitted to the Secretary of State, the Secretary of State is under a mandatory duty to issue a certificate of election. See letter to the Honorable John T. Campbell dated May 22, 1987 by Senior Assistant Attorney General Treva G. Ashworth.