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The State of South Carolina



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Dear Jim:

You have requested the advice of this Office as to the method of appointing trustees for the two (2) school districts in Dorchester County which will remain following their consolidation with portions of a third school district. The controlling provision appears to be §59-19-50 of the Code of Laws of South Carolina, 1976, which reads, in part, as follows:

When school districts are consolidated, the County Board of Education shall appoint, from within the consolidated district, five trustees to serve as trustees of the new district...(emphasis added)

Your specific question is whether the trustees to be appointed to the consolidated boards must be selected from among the trustees serving on the boards of the three (3) school districts as they existed prior to consolidation (predecessor districts) or whether the appointments may be made from the electors residing in the newly consolidated area.

A plain reading of this provision indicates that the new trustees must be selected from among the trustees of the predecessor school districts. Sutherland Statutory Construction, Volume 2A, §§46.01 and 57.03 (4th Ed.). The provision requires the county board to appoint "...five trustees to serve as trustees..." This language would be redundant if read to mean that any citizens or electors could be appointed as "...trustees to serve as trustees..." See Busching v. Superior Court of Ventura County, 115 Cal.Rptr. 241, 524 P.2d 369, 374 (1974). Moreover, the express use of a broad pool of electors and taxpayers for eligibility for appointment to positions as trustees under the general appointment provisions of §59-19-30

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indicates that the legislature chose to use as different a pool for trustee appointments under the more limited circumstances covered by §59-19-50. (Sutherland Statutory Construction §51.02 on The 51.02. The intention of the legislature in choosing to appoint new trustees from among the predecessor trustees may have been to preserve some continuity in the government of the school systems affected by consolidation.

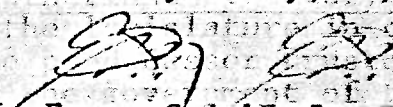
This conclusion should not be altered by the fact that District 2 has an elected Board of Trustees. The changes in Dorchester County involve more than the mere movement of school district lines. One district is being abolished and its portions are being consolidated with the remaining districts. The only authority for such action by a County Board, without first receiving a petition or holding a referendum, is under §59-17-50 of the Code. See §59-17-30. Therefore, because apparently no petition has been filed or referendum held, the County Board must have relied on §59-17-50. See Order of September 11, 1984. This section was passed in the same Act as were the appointment provisions of §59-19-50 which is the only express authority for appointing trustees upon consolidation. Act 379, Article III, §7, Acts and Joint Resolutions of South Carolina, 1951. This association of §§59-17-50 and 59-19-50 indicates that §59-19-50 is controlling. Sutherland, Volume 2A, §§46.05 and 51.02. Although we believe that §59-19-50 would control the appointments, we recommend that pre-clearance be obtained from the Justice Department under the Voting Rights Act unless pre-clearance has already been obtained as to this method of filing the trustee positions.

We understand that alternative arguments could be made as to the above conclusions; however, we conclude that a reasonable reading and application of §59-19-50 is that the trustee appointments must be made from among the trustees serving on the three (3) predecessor Boards of Trustees in Dorchester County. We confine this advice to this specific question and do not address what effect, if any, it would have on taxation matters. See Article X, §5, Constitution of South Carolina, 1895, as amended. We also note that the conclusion expressed concerning the application of §59-19-50 would not appear to preclude special legislation concerning this subject. Moyle v. Mayor Caughman, 217 S.E.2d 367 (S.C. 1975) (S.C. 1975).

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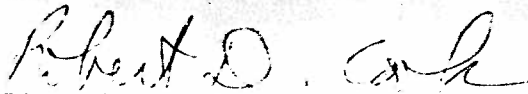
If we may be of other assistance, please let us know.

appointments under the more limited circumstances
839-10-50. Yours very truly, very truly,
intention of the Legislature in providing to appli-
cants among the secretaries may have been
continuity in the system of judicial system


J. Emory Smith, Jr.
Assistant Attorney General

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REVIEWED AND APPROVED:



ROBERT D. COOK

Executive Assistant for Opinions