

The State of South Carolina



OPINION No. 36-121 92351

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 2, 1986

The Honorable Michael R. Daniel
Lieutenant Governor
Post Office Box 142
Columbia, South Carolina 29202

Dear Lieutenant Governor Daniel:

You have advised this Office that special elections must be held to fill three vacancies in the Senate which will have resulted from three Senators having been elected to other offices. As President of the Senate, you are required by Article III, Section 25 of the Constitution of the State of South Carolina to issue writs of election for the purpose of filling the vacancies by special election. You have inquired as to the effect of Act No. 493, 1986 Acts and Joint Resolutions, upon the issuance of the writs.

Article III, Section 25 of the Constitution mandates that the President of the Senate or Speaker of the House of Representatives, as appropriate, issue a writ of election to fill a vacancy occasioned by a legislator's resignation, death, or other action making it necessary to fill a vacancy in the appropriate house. As noted in an opinion dated August 14, 1984 (enclosed), the Speaker of the House in that situation had discretion to change the date of special election; it was noted that the opinion was not free from doubt "in that there does not seem to be a precedent or general law on this subject. However, the legislature always has the power to set election dates"

By Article II, Section 2 of the State Constitution, the General Assembly is mandated to "provide for the nomination of

The Honorable Michael R. Daniel
Page 2
December 2, 1986

candidates, regulate the time, place and manner of elections, provide for the administration of elections," and otherwise enact provisions necessary to fulfill the election process. Thus, the General Assembly has adopted Act No. 493 of 1986 to provide a uniform scheme of special elections to fill vacancies in offices which are to be filled by special elections. Act No. 493 adds Section 7-13-190 to the Code of Laws of South Carolina; subsection (A) provides:

Except as otherwise provided in this Code as to specific offices, whenever a vacancy occurs in office by reason of death, resignation, or removal and the vacancy in office is one which is filled by a special election to complete the term of office, this section applies.

The remaining subsections set forth timetables to be followed, depending upon whether a partisan or nonpartisan election is to be held.

Several criteria are specified in Section 7-13-190 for the section to be applicable: there must not be other provisions within the Code of Laws to fill the vacancy; the vacancy must have occurred due to death, resignation, or removal; and the vacancy in office must be one which must be filled by a special election. In the instant situation, there are no provisions within the Code to fill vacancies in the Senate; the vacancies will have occurred due to resignation of the Senators; and Article III, Section 25 mandates that the vacancies be filled by special election. Therefore, the terms of Section 7-13-190 would be applicable to filling vacancies in the Senate.

Reading Article III, Section 25 with Section 7-13-190 of the Code, the President of the Senate would therefore issue writs of election to fill the vacancies occasioned by the resignation of the three Senators, following the timetable set forth in Section 7-13-190(B) of the Code since partisan elections will be held. Because the United States Department of Justice has already precleared Act No. 493 of 1986 under the Voting Rights Act, submissions to that agency prior to scheduling or holding these special elections will not be necessary.

The Honorable Michael R. Daniel
Page 3
December 2, 1986

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if clarification or additional information should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions