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ATTORNEY GENERAL

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Dear Mr. Duffie:

By your letter received on June 6, 2014 you have asked for an opinion of this Office regarding "the interpretation of Bill S.1284 as it relates to the procedure for elections after reapportionment." In your letter, you state "the bill creates a few issues that require research and resolution." Specifically, you explain:

> First, the map moves P.A. Pournelle from District 3 into District 5 which is currently held by Mary Jones. With regard to Mr. Pournelle and Mrs. Jones now residing in the same District an issue has arisen because each of these board members has two years remaining on their term. The legislation does not contain language on how to address this or what elections need to be scheduled. Second, the map moves William Bowman from District 7 to District 4 which is currently being held by Paul Haase. With regard to Mr. Bowman being moved into District 4 an issue has arisen because the District 4 election is this November, however Mr. Bowman has two years remaining on his term with the School Board. Again, there is no language to address how to deal with this in terms of elections. Third, because of Mr. Pournelle and Mr. Bowman being removed from District 3 and District 7 respectively, an issue arises as to whether they are entitled to complete the two years remaining on their terms in those districts or whether special elections must be held to fill the seats in those two districts.

Continuing, you add that "[i]ssues 1 and 2 generally relate to the question of the procedure for election of Colleton County School Board Members following a reapportionment." You then discuss different ways of addressing the matter before moving to your third question, in which you ask "what effect does the removal of Mr. Pournelle and Mr. Bowman from their districts on the new map have on the 2014 election." Our responses follow.

I. Law

As pointed out in your letter, Act 190 of 1991 ("Act 190") revised the manner in which members of the Colleton County School District's Board of Trustees ("the Board") must be elected. See Legis. Title, Act of Apr. 29, 1991, No. 190, 1991 S.C. Acts, 109th Gen. Sess. ("An act to revise the manner in which members of the Board of Trustees of the School District of Colleton County must be elected beginning in 1992, including the establishment of nonpartisan elections and the establishment of seven single-member election districts for the election of certain members, and to provide for the terms of these members elected."). In particular, Act 190 consists of four sections; Section One, which contains five subsections, entitled (a)-(e) dealing with various aspects of establishing the seven single-member election districts; Section Two which lays out the relevant voting districts and population statistics relating to the seven single-member districts; Section Three which requires the Colleton County Legislative Delegation to modify the single-member districts once the 1990 census becomes available to comply with "one man-one vote;" and Section Four which states Act 190 becomes effective upon approval by the Governor. Id.

Specifically, Section One of Act 190 requires members of the Board to be elected from seven single-member districts in nonpartisan elections. Act No. 190 § 1(A), 1991 S.C. Acts, 109th Gen. Sess. Section One further states "[o]ne member of the [Board] must be a resident of and elected from each of the seven defined single-member election districts established in Section 2." Id. Addressing the terms to be served, Section One explains that seats from districts two, four, and six would serve two year terms following the 1992 election and thereafter, would serve four year terms.[1] Id. Section One of Act 190 also discusses when a successor's term starts in addition to detailing the procedure to be followed when a vacancy occurs. Id.

In addition to discussing issues related to seats on the Board, their terms, and the procedure to be utilized in the event a seat on the Board becomes vacant, Section One of Act 190 sets further requirements on those who seek to become members of the Board. Act No. 190 § 1(B), 1991 S.C. Acts, 109th Gen. Sess. For example, each member of the Board must be a "qualified elector and resident of the election district from which elected by the qualified electors of that district" and in order to qualify for such an election, must file a notice of candidacy with the county election commission between 60 to 90 days prior to the election. Id.

Earlier this year, S. 1284, ratified by the General Assembly as R. 186 ("R.186"), was signed by the governor and enacted into law on May 16, 2014.[2] R. 186, 120th Gen. Ass. Reg.

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[1] As a result of this provision, even-numbered seats on the Board are elected every four years starting from 1994, while odd-numbered seats are elected every four years starting from 1992. Id.

[2] The bill was first introduced in the Senate on May 7, 2014, was introduced in the House on May 13, 2014, and was ratified by the General Assembly on May 15, 2014. See Status Information, R. 186, 120th Gen. Ass. Reg. Sess. (S.C. 2014).

Sess. (S.C. 2014). According to its legislative title, the purpose of R. 186 is to "amend Act 190 of 1991 . . . relating to the Board of Trustees of the School District of Colleton County, so as to reapportion the specific election districts from which members of the Board of Trustees of the school district . . . must be elected[.]" Legis. Title, S.C. Acts, R. 186. Continuing, the legislative title of R. 186 explains such reapportionment will begin "with school district elections in 2014" and adds "demographic information in regard to these newly drawn districts." Legis. Title, S.C. Acts, R. 186. Specifically, Section One of R. 186 amends Section Two of Act 190 to read:

> Notwithstanding another provision of law, beginning with the school district elections in 2014, the seven single-member election districts from which members of the Colleton County School District Board of Trustees must be elected are as shown on the Colleton County School District Board of Trustees map S-29-00-14 as maintained in the Office of Research and Statistics of the State Budget and Control Board.

S.C. Acts, R. 186 § 1. Continuing, R. 186, in subsection two of Section One, sets forth the demographic information supporting map S-29-00-14. S.C. Acts, R. 186 § 2. Notably, R. 186 does not amend any other portion of Act 190.[3]

II. Analysis

Understanding the relevant legislative provisions regarding this matter we now return to your questions which we interpret as essentially asking the effect that R. 186 has on the upcoming school board elections. Specifically, you ask: (1) how to resolve issues related to current incumbent P.A. Pournelle, who was elected from current District Three, now as a result of redistricting, residing in incumbent Mary Jones' voting district, the new District Five, when both incumbents have two years remaining on their terms; (2) how to resolve issues related to current incumbent William Bowman, who was elected from current District Seven, now as result of redistricting, residing in incumbent Paul Haase's voting district, the new District Four, when Haase's seat is up for reelection this November and Bowman has two years remaining on his term; and (3) "what effect does the removal of Mr. Pournelle and Mr. Bowman from their districts on the new map have on the 2014 election." Because we interpret R. 186 as only prospectively requiring members of the Board to be elected from the newly-designated districts, meaning it does not "remove" incumbent members of the Board from the elected position they currently occupy, it is the opinion of this Office that R. 186 will not affect the upcoming 2014 school board elections, nor will it require special elections to be held for the incumbents

[3] We note that a new bill seeking to amend R. 186 is, as of this date, currently pending before the Senate. See S. 1324, 120th Leg. Sess., Reg. Sess. (S.C. 2014) (bill seeking to amend Section 2 of Act 190 of 1991, "as last amended by an act of the General Assembly bearing Ratification Number 186 of 2014" to substitute map S-29-00-14A for map S-29-00). Moreover, we note that "reapportionment is primarily the duty and responsibility of the State through its legislature[.]" Voinovich v. Quilter, 507 U.S. 146, 156-57 (1993).

discussed in your letter. See Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) (explaining Lancaster County reapportionment legislation placing two incumbents with two years remaining on their terms from different districts into one new district only operates prospectively and therefore did not result in either incumbent ceasing to become an elector meaning it did not create a vacancy and therefore a special election was not required); State ex rel. Norwood v. Holden, 47 N.W. 971, 972 (Minn. 1891) (stating reapportionment legislation changing the districts in which two chairmen-elect resided was prospective with respect to the qualifications of an elector and does not affect the rights of either individual to their respective offices); Olsen v. Merrill, 5 P.2d 226, 229 (Utah 1931) (holding reapportionment legislation changing election districts operates prospectively and does not affect the qualifications of an elector meaning no vacancy was created by the change in districts).

A. Interpreting R. 186

In order to properly apply R. 186, we must first determine its legislative intent.[4] As noted above, Section One of R. 186 amends Section Two of Act 190 to read:

> Notwithstanding another provision of law, *beginning with the school district elections in 2014*, the seven single-member election districts from which members of the Colleton County School District Board of Trustees *must be elected are as shown on the Colleton County School District Board of Trustees map S-29-00-14* as maintained in the Office of Research and Statistics of the State Budget and Control Board.

S.C. Acts, R. 186 § 1 (emphasis added).

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[4] While we interpret R. 186 for purposes of ascertaining legislative intent, we do so without commenting on the constitutionality of the legislation as we understand this enactment is currently the subject of pending litigation and it is the longstanding policy of this office that we do not issue legal opinions on such matters. See Op. S.C. Atty. Gen., 1995 WL 803724 (August 7, 1995) ("Due to . . . pending litigation . . . this Office is unable to undertake an opinion on any matter which may be pending before a court or administrative body for resolution."); Op. S.C. Atty. Gen., 1991 WL 633010 (July 15, 1991) ("In conclusion, many of the issues related to your question are pending in litigation and therefore cannot be addressed by an opinion of this Office."). Rather we presume the legislation that is the substance of your request is constitutional and add that only a court may find otherwise. See Op. S.C. Atty. Gen., 1998 WL 261528 (April 28, 1990) ("In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects."); Op. S.C. Atty. Gen., 1981 WL 157886 (July 29, 1981) ("It is a well-recognized rule of statutory construction that legislative enactments are presumed to be constitutional[.]"). Moreover, even assuming the constitutionality of R. 186's reapportionment legislation was not the subject of pending litigation, we believe the determination of whether the newly-designed election districts violate the Equal Protection Clause's "one-person, one-vote" requirement is a factual question beyond the scope of an opinion of this Office. See Op. S.C. Atty. Gen., 2014 WL 1398585 (February 28, 2014) (explaining the determination of whether reapportionment of an election district violates the Constitution is a factual question outside of the scope of an advisory opinion from this Office); Op. S.C. Atty. Gen., 2014 WL 399594 (January 6, 2014) ("[T]his Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court").

"The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); Mid-State Auto Auction of Lexington, Inc. v. Airman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011).

Here, applying the principles of statutory construction to the terms of R. 186 leads us to the conclusion that the intent of the legislature in enacting R. 186 was, as mentioned in its legislative title, to "reapportion the specific election districts" *beginning with the 2014 elections.* Legis. Title, S.C. Acts, R. 186. In other words, R. 186 does not "remove" incumbents from their current seats on the Board, but instead in conjunction with § 1(A) of Act 190 *supra*, merely requires that individuals wishing to run for seats on the Board in the upcoming 2014 general election be residents and qualified electors of the new election districts portrayed in map S-29-00-14. See Act No. 190 § 1(A), 1991 S.C. Acts, 109th Gen. Sess. (requiring a candidate for a seat on the Board be a "qualified elector and resident of the election district[.]"). Therefore, under our interpretation of R. 186, candidates seeking election to the Board in the upcoming 2014 general election for seats two, four and six, must be a resident and qualified elector of their respective "new" election districts laid out in map S-29-00-14. Conversely, those incumbents whose seats are not up for election in 2014; seats one, three, five and seven, will continue to serve the duration of their terms in their respective seats representing their current districts, but in the 2016 election, must reside in their respective new election districts laid out in map S-29-00-14.

B. Applying R. 186 to the Situations Mentioned in your Letter

Having interpreted R. 186, we must now apply it to the specific questions addressed in your letter. In doing so we first note the effect of school board reapportionment on the terms and election of its members is not specifically addressed by the South Carolina Code as it is with other deliberative bodies here in South Carolina.[5] See Op. S.C. Atty. Gen., 2012 WL 2950118

[5] For example, Section 4-9-90 of the South Carolina Code addresses the effect of reapportionment on the terms and election of county council members stating:

> Any council member who is serving a four-year term in a district that has been reapportioned and whose term does not expire until two years after reapportionment becomes effective shall be allowed to continue to serve the balance of his unexpired term representing the people in the new reapportioned district if he is an elector in such reapportioned district. In the event that two or

(July 5, 2012) ("[W]e are unaware of any statutory provision similar to section 4-9-90 setting forth the effect of redistricting on the unexpired terms of elected members of a school district board of trustees."). As a result, our analysis is largely based on the application of R. 186 to the Board's enabling legislation contained in Act 190 § 1(A) and, with respect to the subsidiary question raised—whether a subsequent reapportionment results in an incumbent no longer being a qualified elector and resident of the election district—a prior opinion and the common law.[6]

1. Resolving Issues Concerning the Incumbents from Districts Three and Five

We believe R. 186 answers not only your first question regarding Mr. Pournelle and Mrs. Jones, but also resolves your third question as to the effect R. 186 has on the 2014 election. Specifically, because R. 186 is prospective, we believe both Mr. Pournelle, as the elected official currently representing District Three, and Mrs. Jones, as the elected official currently representing District Five, have yet to be "removed" from their current districts and are therefore entitled to serve the remainder of their terms, meaning R. 186 will not affect either incumbent in the 2014 election, nor will it require a special election. See Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) (explaining Lancaster County reapportionment legislation placing two incumbents with two years remaining on their terms from different districts into one new district only operates prospectively and does not disqualify either member from continuing to hold office meaning no special election was required); Holden, 47 N.W. at 972 (stating reapportionment legislation changing the districts in which two chairmen-elect resided was prospective with respect to the qualifications of an elector and does not affect the rights of either individual to their respective offices, meaning it does not require a special election). Having determined this, we will now address the subsidiary question of whether Mr. Pournelle continues to meet the "qualified elector" requirement mentioned in South Carolina constitutional and statutory law.

a. Mr. Pournelle Continues to Meet the Definition of a Qualified Elector

Article XVII, § 1 and Article VI, § 1 of the South Carolina Constitution require that an officeholder possess the qualifications of an elector. See S.C. Const. Art. XVII, § 1 ("No person

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more council members, because of reapportionment, become electors in the same district, an election shall then be required. *Provided*, however, that if any seat should become vacant after election districts have been reapportioned but prior to the expiration of the incumbent's term of office due to death, resignation, removal, or any other cause, the resulting vacancy shall be filled under the new reapportionment plan in the manner provided by law for the district that has the same district number as the district from which the council member whose office is vacant was elected. For the purpose of this section, a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted at the time of his election.

[6] As we noted in a prior opinion of this Office addressing school board reapportionment for the Lancaster County School District's Board of Trustees, "it may be helpful to resolve any ambiguity in this area by enacting legislation clarifying what effect redistricting has on such offices." Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012).

shall be elected or appointed to any office in this State unless he possess the qualifications of an elector."); S.C. Const. Art. VI, § 1 ("No person may be popularly elected to and serve in any office in this State or its political subdivisions unless he possesses the qualifications of an elector."). Section 7-5-120 of the Code details these qualifications. In particular, Section 7-5-120 requires, *inter alia*, that an elector be "a resident of the county and in the polling precinct in which the elector offers to vote." S.C. Code Ann. § 7-5-120(A)(3). Section One of Act 190 contains a similar requirement stating, "each member of the Board must be a "qualified elector and resident of the election district" and must be "elected by the qualified electors of that district." Thus, the law can be summarized as clearly requiring an officeholder to be a resident of the election district he or she is to represent. See also Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) (summarizing the law in the same fashion).

Here, we believe that based on our interpretation of R. 186, specifically that the statute only operates prospectively and does not "remove" incumbents from their current seats on the Board, there is no question Mr. Pournelle continues to meet the constitutional and statutory requirements of an elector. However, even if this were not the case, we believe, consistent with our prior opinion on this matter, that because post-election reapportionment does not change an incumbent's status as a qualified elector, the impending change to Mr. Pournelle's respective election district does not create a vacancy and therefore, would not require that a special election be held.[7] See Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) (explaining Lancaster County reapportionment legislation placing two incumbents with two years remaining on their terms from different districts into one new district only operates prospectively and does not change either incumbent's status as a qualified elector meaning no vacancy occurred and thus no special election was required); Holden, 47 N.W. at 972 (stating reapportionment legislation changing the districts in which two chairmen-elect resided was prospective with respect to the qualifications of an elector and does not affect the rights of either individual to their respective offices, meaning it does not require a special election); Olsen, 5 P.2d at 229 (holding reapportionment legislation changing election districts operates prospectively and does not affect the qualifications of an elector meaning no vacancy was created by the change in districts).

Indeed, while it is true the Legislature clearly intended, by enacting § 1(A) of Act 190, that a member of the Board be a "qualified elector," "resident of the election district" and "elected by the qualified electors of that district," there is nothing in Act 190 that suggests an individual ceases to be a qualified elector when *subsequent reapportionment legislation* changes the election district in which the incumbent resides. Thus, in the absence of any legislation establishing the effect reapportionment has on the unexpired terms of members of the Board, we

[7] While we acknowledge our prior opinions have explained residency qualifications are considered continuous, e.g. Op. S.C. Atty. Gen., 1993 WL 494585 (October 18, 1993); Op. S.C. Atty. Gen., 2004 WL 736920 (March 17, 2004), we note these opinions only addressed changes in the incumbent's actual residency rather than changes to the election district in which the residence is located. Indeed, the only opinion which has addressed this issue is our 2012 opinion to the Lancaster County School District Board of Trustees noted above. Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012).

believe, consistent with our prior opinion, that there is no authority to cut short an incumbent's term and accordingly conclude no vacancy was created by R. 186's prospective reapportionment. See Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) ("In the absence of any legislation establishing what effect redistricting has on the unexpired terms of members of the Board of Trustees, we find no statutory authority to cut short any such member's term."). As a result, a special election is unnecessary as there is simply no vacancy left to fill. See S.C. Code Ann. § 7-13-190(A) (detailing that a vacancy must occur in office in order to hold a special election to fill a vacancy); Op. S.C. Atty. Gen., 1987 WL 342816 (March 5, 1987) (stating that a special election must be statutorily authorized).

2. Resolving Issues Concerning the Incumbents from Districts Four and Seven

We believe R. 186 also answers your second question concerning Mr. Bowman and Mr. Haase as well as your third question regarding the effect R. 186 has on the 2014 election. Here, because R. 186 is prospective, Mr. Bowman, who currently represents District Seven and has two years left on his term, is not "removed" from his current seat, but instead will continue to represent District Seven until the 2016 general election when he would then be required to be a resident of the "new" District Seven.[8] Conversely, Mr. Haase, who we understand currently represents District Four and whose seat is up for election in the 2014 general election, will have to reside in the "new" District Four in order to meet Act 190, §1(A)'s qualified elector requirement.[9] Moreover, even if this were not the case we believe, as is the case with Mr. Pournelle, that because post-election reapportionment does not change an incumbent's qualified elector status, the upcoming change to Mr. Bowman's respective election district does not create a vacancy meaning a special election would not be required. See Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) (explaining Lancaster County reapportionment legislation placing two incumbents with two years remaining on their terms from different districts into one new district only operates prospectively and does not disqualify either member from continuing to hold office meaning no special election was required); Holden, 47 N.W. at 972 (stating reapportionment legislation changing the districts in which two chairmen-elect resided was prospective with respect to the qualifications of an elector and does not affect the rights of either individual to their respective offices, meaning it does not require a special election). With this in mind we will now address the question of whether Mr. Bowman continues to meet the "qualified elector" requirement discussed above.

a. Mr. Bowman Continues to Meet the Definition of a Qualified Elector

[8] Based on your letter, we recognize that Mr. Bowman would actually have to move his residence to the new District Seven in order to satisfy the qualified elector requirement for the 2016 election, but use this example to show the prospective application of the statute.

[9] Again, we realize that based on your letter, Mr. Haase currently resides in what will be the "new" District Four, but use this as an example of the interpretation of R. 186.

As is the case with Mr. Pournelle, Mr. Bowman, by virtue of the fact R. 186 is prospective, would not be removed from his current seat on the Board and therefore would continue to meet the constitutional and statutory requirements of an elector. Nevertheless, even if R. 186 was interpreted in a different fashion, we believe, consistent with our prior opinion, that because post-election reapportionment does not change an incumbent's status as a qualified elector, the change to Mr. Bowman's respective election district does not create a vacancy and therefore, would not require a special election for the same reasons discussed in II(B)(1)(a) *supra*. See Op. S.C. Atty. Gen., 2012 WL 2950118 (July 5, 2012) (explaining Lancaster County reapportionment legislation placing two incumbents with two years remaining on their terms from different districts into one new district only operates prospectively and does not change either incumbent's status as a qualified elector meaning no vacancy occurred and thus no special election was required); Holden, 47 N.W. at 972 (stating reapportionment legislation changing the districts in which two chairmen-elect resided was prospective with respect to the qualifications of an elector and does not affect the rights of either individual to their respective offices, meaning it does not require a special election); Olsen, 5 P.2d at 229 (holding reapportionment legislation changing election districts operates prospectively and does not affect the qualifications of an elector meaning no vacancy was created by the change in districts). As a result, a special election is unnecessary as there is simply no vacancy left to fill. See S.C. Code Ann. § 7-13-190(A) (detailing that a vacancy must occur in office in order to hold a special election to fill a vacancy); Op. S.C. Atty. Gen., 1987 WL 342816 (March 5, 1987) (stating that a special election must be statutorily authorized).

III. Conclusion

In conclusion, it is the opinion of this Office that since R. 186 is only prospective, meaning it merely requires members of the Board to be elected from the *newly-designated districts*, it does not "remove" incumbent members of the Board from the elected position they currently occupy. Accordingly, we conclude that R. 186 will not affect the upcoming 2014 school board elections, nor will it require special elections to be held for the incumbents discussed in your letter.

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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