

The State of South Carolina

July 1754



Office of the Attorney General

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July 31, 1985

The Honorable Joyce C. Hearn  
Member, South Carolina House  
of Representatives  
404C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Hearn:

You have requested the opinion of this Office as to which public official or body has the authority to fill a vacancy on the Richland County School District Two Board of Trustees. We conclude that the Richland County Council would have that authority.

Local legislation for Richland County provides that vacancies occurring among the elected trustees "...may be filled at any time by the Richland County Board of Education for the remainder of the unexpired term...", Section 21-3883 of the Code of Laws of South Carolina, 1962. As you know, the County Board of Education has been abolished and at least some of its power have been devolved upon county council. Act 140, Acts and Joint Resolutions of South Carolina, 1969. Because no other applicable legislation vests vacancy filling authority for the former District Two Board in any other official or body, the County Board's power to fill vacancies clearly appears to be one which would be devolved upon the Richland County Council pursuant to Act 140. 1/

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1/ Section 21-3913 of the 1962 Code, which places certain limitations on the authority of the old County Board of Education over Richland County School District One, would not be applicable to District Two. See, Ops. Atty. Gen. (February 23, 1984).

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This conclusion that County Council has vacancy filling authority as to District Two is supported by general legislation also. Section 59-19-60 of the Code of Laws of South Carolina, 1976, states that "[v]acancies occurring in the membership of any board of trustees shall be filled for the unexpired term by the county board of education in the same manner as provided for full term appointments." The applicability of this provision does not appear to be affected by the fact that the trustees of District Two are elected rather than appointed. The local legislation for filling District Two vacancies provides for county board appointments, and no legislative authority exists for filling those vacancies by elections. 29 C.J.S. Elections §81. Therefore, under the general law, filling these vacancies by appointment clearly appears to be appropriate. Id. As noted above, county council should have that appointment authority.

Section 4-9-170 of the Home Rule Act does not limit this authority of county council. See, Section 4-9-170 of the Code. As to school districts, it contains certain limitations on the appointment authority that it gives county councils; however, the power merely to fill vacancies on the District Two Board would not constitute the general power of appointment that is apparently contemplated by Section 4-9-170. By analogy, the Governor has authority to fill vacancies in many county offices under Sections 1-3-220 and 4-11-20 of the Code although he does not make the initial appointments to those offices. <sup>2/</sup> Moreover, even if Section 4-9-170 covered vacancy filling, opinions of this Office have concluded that Section 4-9-170 does not abolish appointment powers already vested in county councils prior to the Home Rule Act, such as that power given to Richland County Council by Section 4 of Act No. 140 of 1969. See, Ops. Atty. Gen. (May 29, 1979, August 9, 1979, and September 11, 1979). Thus, Section 4-9-170 does not repeal the vacancy filling provisions devolved on county council as to Richland County School District Two.

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<sup>2/</sup> This authority of the Governor does not extend to filling vacancies on the District Two Board of Trustees because those trustees lack county wide authority. See, Ops. Atty. Gen. (September 28, 1983).

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In conclusion, the opinion of this Office is that the authority to fill vacancies on the Richland County School District Two Board of Trustees rests with county council. If you have any questions, or if you need additional information, please do not hesitate to contact me.

Yours very truly,



J. Emory Smith, Jr.  
Assistant Attorney General

REVIEWED AND APPROVED:



Robert D. Cook  
Executive Assistant for Opinions

cc: William F. Able  
Richland County Attorney