

1981 WL 157814 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 12, 1981

\*1 Honorable Richard W. Riley  
Governor  
State of South Carolina  
Post Office Box 11450  
Columbia, South Carolina 29211

Dear Governor Riley:

Mr. McLeod has referred your recent letter to me. You have stated that you have received and accepted the resignation of the Oconee County Superintendent of Education. You have inquired if the vacancy should be filled by appointment or election.

As you have noted in your letter, Act No. 383 of 1961 provides that a vacancy in this office should be filled by special election; however, Sections 1-3-330 and [4-11-20 of the South Carolina Code of Laws, 1976](#), authorize the Governor to fill a vacancy in a county office by appointment.

The general law in this area is that a special law should not be enacted where a general law has been or can be enacted. 73 Am.Jur.2d [Statutes](#) § 44. However, it has been held in this State that special laws may be enacted regarding school matters and will not violate the provisions of [Article 3, Section 34, of the South Carolina Constitution](#). [Smythe v. Stroman](#), 162 S.E.2d 168, 251 S.C. 277 (1968).

When a general law and a special law exist and contain inconsistent provisions, the special provisions control. 82 C.J.S. [Statutes](#) § 347(b). Therefore, the special provisions regarding a special election to be held to fill a vacancy in the office of Superintendent of Education in Oconee County would control and you would not be able to appoint a person to fill this vacancy.

Sincerely,

Treva G. Ashworth  
Senior Assistant Attorney General

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