

1982 WL 189326 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 14, 1982

\*1 Dr. Marvin Efron  
Chairman  
Board of Trustees  
Wil Lou Gray Opportunity School  
Box 45  
West Columbia, South Carolina 29171

Dear Dr. Efron:

You have requested advice from this office as to the effect of the resignation, prior to the end of his term, of a member of the Board of Trustees of the South Carolina Opportunity School who is elected by the Legislature under [§ 59-51-30 of the Code of Laws of South Carolina \(1976\)](#). Neither this statute nor any other statute provide for the filling of vacancies in positions held by trustees elected by the Legislature. [Section 59-51-30](#) states that '[m]embers of the Board who are elected by the Legislature shall serve for terms of four years and until their successor shall be appointed and shall qualify . . .'

[Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415 \(1964\)](#), construed very similar language in a statute providing for the appointment of county election commissioners. The court concluded that this language made mandatory the election commissioners' serving until their successors were appointed and qualified. It held that their attempted resignation was of no effect and that their tenure in office together with the duties and responsibilities thereof were to continue since no successors had been qualified. The court stated that its holding was in accord '. . . with the general rule that a public officer does not cease to be such even when his resignation is accepted, but continues in office until a successor is qualified where the statute or constitution so provides.' [138 S.E.2d at 417](#).

Applying [Rogers](#) to [§ 59-51-30](#) leads to the conclusion that any resignation submitted by a member of the Board of Trustees of the Opportunity School elected by the Legislature would be of no effect because no provision is made for appointing or electing another trustee to fill the vacancy before the end of his term. If we may be of further assistance to you, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

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