

1982 WL 189517 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 28, 1982

*1 The Honorable William W. Doar, Jr.
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Doar:

Mr. McLeod has referred your recent letter to me for reply. You have stated that Mr. T. J. Stalvey, who was the elected Chairman of the Georgetown County Board of Education, recently died. Mr. Stalvey had been elected in the General Election of 1980 to a four year term. You have raised the following questions:

1. Does a special election have to be called in order to fill the vacancy of chairman?
2. Can the resident Delegation members appoint a chairman until the General Election of 1984?
3. In any event, would the person appointed by the Delegation have to be a present member of the Board of Education?

Act No. 907 of 1962 originally created the Georgetown County School District. The trustees were appointed by the Governor upon the recommendation of a majority of the Legislative Delegation of Georgetown County. In 1966 Act No. 747 amended these provisions to make the now County Board of Education an elected board. However, there were no provisions for filling a vacancy. Act No. 831 of 1976 again amended this section creating a board of eight members and a chairman. The Act provides that:

[a]ny vacancy occurring on the board for any reason shall be filled by general or special election in the same manner as provided for the original election, except that if a vacancy occurs in the office of Chairman, until such general or special election can be held and until the person so elected qualifies for office, the members of the General Assembly representing Georgetown County who are residents of the county may fill such vacancy by appointment by majority (Emphasis added.)

Under the provisions of this section the Legislative Delegation may appoint a person to replace the Chairman until an election is held to fill this office. There is no requirement that the person appointed be a present member of the Board. From my reading of the statute this appointed official would hold office until a special election could be held.

The statute provides that a vacancy on the board 'shall be filled by general or special election' and that a vacancy in the office of chairman 'may' be filled by appointment 'until such general or special election can be held.' Outside of the provision granting the Legislative Delegation the discretionary power to appoint a person to fill a vacancy in the office of Chairman the language of the statute is the same, i.e., the vacancy shall be filled in a general or special election.

As there are two years before the next general election, it would appear that a special election should be called to fill the office of Chairman. Any person appointed by the Legislative Delegation would only hold office until his successor was elected and qualified.

4. Could a nonpartisan special election be conducted to fill the vacancy created by Mr. Stalvey?

*2 The statute does not provide for nonpartisan elections; therefore, a special election could not be conducted nonpartisan.

5. Is there any other state law particularly the Home Rule legislation which would in any way modify or affect Act 831?

None of which I am aware.

Sincerely,

Treva G. Ashworth

Senior Assistant Attorney General

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