

1977 WL 37186 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 16, 1977

*1 Dr. Cyril B. Busbee
State Superintendent of Education
Department of Education
Columbia, SC

Dear Dr. Busbee:

Mr. McLeod has referred your recent letter to me for reply. You have stated that the County Superintendent of Education died on February 12, 1977. You have further stated that his term of office expired on July 1, 1977, and that he had been elected in November to another four year term which would commence in July. You have asked the following question:

... what will be the length of term of the County Superintendent appointed by the State Board of Education to fill this vacancy. Will the term be only until July 1, 1977, or will it be for the four (4) year term as required by Section 21-61 of the South Carolina Code of Laws, plus the 5½ months remaining of the current term?

As you have stated in your letter, South Carolina Code of Laws, 1962, Section 21-67 authorizes the State Board of Education to fill all vacancies in the office of the County Superintendent for the unexpired term. 67 C.J.S. Officers, § 50, p. 208 states in part

When a reelected officer dies before the commencement of his second term, a vacancy is created for the first term, but a vacancy is not created for the second term, unless the statute so provides.

Therefore, the State Board of Education could appoint a person to fill the vacancy until July 1, 1977.

In your letter you have raised a second question as to how the special election to fill the four year term can be called. There is no statute directly governing this situation; and in my preliminary research, I have been unable to reach a definitive conclusion as to the proper procedure. I will continue to research this issue and respond to your question as expeditiously as possible; however, I did want to write you this letter in order to furnish you with an answer to the initial question that you raised.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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