

1973 WL 27725 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 31, 1973

***1 Re: Pickens County School District**

The Honorable Harris P. Smith
Senator
Box 68
Easley, South Carolina 29640

Dear Harris:

Thank you for your letter of October 29, 1973, inquiring if a special election is necessary to fill a vacancy which will occur in January or February, 1974, consequent upon the resignation of a trustee. A scheduled election is set for November 1974 and you inquire if it is necessary that an election be ordered after the resignation of the member in view of the fact that a very short period of time will elapse before the expiration of his term.

It is my opinion that Act No. 988, approved March 19, 1968 (68 Acts 2379), had the effect of striking the former Section 21-3793 and substituting in lieu thereof the provisions of the later Act. That Act differs, as it was in fact required to differ, from the procedure previously provided for filling vacancies on the Board of Trustees by specifying:

‘The superintendent of education shall call a special election to fill any vacancy occurring by reason of resignation, death or other reasons.’

In my view, there is no alternative except to call for a special election to fill the vacancy. However, the resigning member, in my opinion, is required to continue serving until his successor has been elected. See [Rodgers v. Coleman](#), 245 S.C. 32, 138 S.E.2d 415. I do not express any opinion as to whether this statement would be applicable should the resigning member remove his residence or incur other disqualifications.

The Board, without the participation of the resigning member, could, of course, still function as a board in that a majority of its membership would still be actively serving, but it is my opinion that the election may be compelled by mandamus if that eventually should be resorted to.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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