



ALAN WILSON
ATTORNEY GENERAL

January 10, 2013

Earlean C. Smiley, Ed.D.
Superintendent, McCormick County School District
821 N. Mine Street
McCormick, South Carolina 29835

Dear Dr. Smiley:

Attorney General Alan Wilson has referred your letter of December 17, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: 1) Was the process in accordance with the law by which the McCormick County [School] Board of Trustees nominated a candidate to McCormick County Council to fill a vacancy on the Board of Trustees or did it conflict with their own policy?
2) What is the meaning of the McCormick County [School] Board of Trustees' policy that "[a]ny vacancy will be filled for the unexpired portion of the term in the same manner provided for vacancies for full terms?"

Short Answer: This Office does not answer factual questions, so this Office will not address the factual issues but is able to analyze the underlying legal issues. Based on the information provided to this Office, a court is likely to find McCormick County [School] Board of Trustees' process of nominating a candidate is in accordance with the law. This Office's interpretation of the meaning of the policy is discussed below.

Law/Analysis:

By way of background, as you mentioned in your letter, McCormick County [School] Board of Trustees currently has two vacancies for unexpired terms to fill. South Carolina Act No. 185 of 1997 section 1 provides:

In the event that candidates do not offer in the general election for any full-term vacancies on the board as specified above, the Governor shall appoint the trustee or trustees to fill any such vacancies upon recommendation of the McCormick County Council. Any vacancies shall be filled for the unexpired portion of a term by appointment by the Governor upon recommendation of the McCormick County Council. In making recommendations for appointments to fill full-term or unexpired-term vacancies, the McCormick County Council may request and receive recommendations from the Board of Trustees.

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As it is clearly written in the Act, McCormick County Council “may” receive recommendations from the McCormick Board of Trustees (hereinafter “the Board”). Based on Act No. 185, McCormick County Council is not required to seek any recommendation from the Board in making its recommendation to the Governor.

As an aside, special elections must be statutorily authorized. Op. S.C. Atty. Gen., July 5, 2012 (2012 WL 2950118) (citing Op. S.C. Atty. Gen., 1987 WL 342816 (March 5, 1987)). South Carolina Code § 7-13-190 limits vacancies in office filled by special election to the following reasons:

- 1) Death,
- 2) Resignation, or
- 3) Removal.

If there is no vacancy due to death, resignation or removal, there cannot be a special election. Id. In the current situation Act No. 185 delineates the proper method for filling the two vacancies for their unexpired terms. Therefore a special election would not be proper in this situation.

1) The first issue presented in your letter is whether the process by which the McCormick County Board of Trustees nominated a candidate to McCormick County Council to fill a vacancy on the Board was in accordance with the law. To better answer this question, let us address the second issue first.

2) The second issue presented in your letter is the meaning of the McCormick County Board of Trustees’ policy that “[a]ny vacancy will be filled for the unexpired portion of the term in the same manner provided for vacancies for full terms.” This policy is found in Policy BBE Unexpired Term Fulfillment/Vacancies issued 6/07 (hereinafter the “Policy”). The purpose is “[t]o establish the basic structure for filling vacancies prior to the end of a term.” The Policy says, in part:

Any vacancy will be filled for the unexpired portion of the term in the same manner provided for vacancies for full terms.

Policy BBE Unexpired Term Fulfillment/Vacancies (issued 6/07) McCormick County [School] District Board of Trustees. We must next look to the manner in which vacancies for full terms are provided for. Vacancies for full terms on the Board are provided for in Policy BBB Board Membership- Elections. It says that “[a]ll candidates will be qualified electors of the county and will file a statement of candidacy with the board of election and registration by August 15 of the election year.” However, the Board’s policy of filling vacancies for unexpired terms does not override Act No. 185 which requires the Governor to appoint a trustee to fill each vacancy upon the recommendation of McCormick County Council. Nevertheless, the requirement that all candidates be qualified electors is in both Policy BBB and Act No. 185 and therefore would apply. A qualified elector would entail three requirements for a candidate:

- 1) He/she is at least eighteen (18) years old;
- 2) He/she is registered to vote; and
- 3) He/she is a resident of the county.

S.C. Code § 7-5-120 (1976, as amended). Therefore, the Board must stipulate that these three requirements are met for any candidate they recommend. The Board must also follow its own

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requirements for qualifications for board members as long as it does not violate any superseding authority. This would include Policy BBBA Board Member Qualifications (issued 11/00) which requires a board member to have "a genuine interest in and devotion to public education, a willingness to give time and effort to the work, a capacity for understanding people, and ability to work cooperatively with others."

Having analyzed the second issue and determined the Board must follow the requirements of Act No. 185 in addition to its own policies (as long as they do not conflict with the Act or other superseding authority), let us now return to the first issue. Based on the information provided to this Office by you, it appears the process the Board used to nominate a candidate was to publish an ad in the McCormick County Messenger and had the candidates fill out a questionnaire with nine questions. This Office was not provided with all the questions, but assuming the questions were all in alignment with the Board's policies and had a legitimate, constitutional purpose, it is likely a court would allow such questions to screen applicants in order for the Board to narrow down to a single candidate to recommend. If the Board's candidate met the requirements of an elector, a court is not likely to strike down the process by which the Board arrived at a nomination, nor is it likely a court would find the Board did not act in accordance with the law. The Board has to have some method by which it narrows down the applicants to one if it is charged with the task of nominating a single candidate to the McCormick County Council.

If the McCormick County Council is dissatisfied with the candidate or the process by which the Board of Trustees arrived at the candidate, Act No. 185 is clear in allowing County Council to reject the recommendation of the Board and to recommend its own candidate.

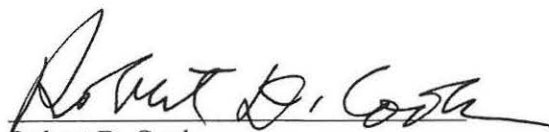
Conclusion: Based on the information provided and the conclusion that the McCormick County [School] Board of Trustees' process of nominating a candidate was in accordance with the law, McCormick County Council is free to accept or reject that nomination. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General