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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 2, 2002

The Honorable Converse A. Chellis, III
Member, House of Representatives
119 Parkwood Drive
Summerville, South Carolina 29483

Re: Informal Opinion

Dear Representative Chellis:

You have asked a question concerning a vacancy which has occurred on the Summerville School District 2 Board of Trustees. Specifically, you state that

[e]arlier this month, a member of the Trustees passed away, leaving a vacancy. The vacant term is scheduled to end in November of 2004. The seven Trustees are elected to staggered four year ... terms to at-large seats. During an election, the candidates receiving the highest number of votes are elected to the board. Therefore, if three seats are open for election, the three candidates with the highest number are elected to the open seats. In the November 2002 election, there are three seats which are due for election. Four candidates have filed for these seats.

The Dorchester delegation passed Act 445 in 2000 which reads:

Vacancies on the board must be filled by appointment upon a majority vote of the members of the House of Representatives and a majority of the Senators representing District 2 until the next general election, at which time a successor must be elected in the same manner provided in this act for the unexpired term or for a full term as the case may be.

Further, the act also reads:

Any person who wishes to become a candidate for election to the board shall file a petition containing the signatures of at least two hundred fifty qualified electors residing in the district with the Dorchester County Election Commission not later than twelve

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o'clock noon on July fifteenth or if July fifteenth falls on a Saturday or Sunday, not later than twelve o'clock on the following Monday.

You note that you have several concerns about filling the vacant seat in considering Act 445. Among your questions are the following:

First, when the Dorchester delegation appoints a member to fill this unexpired term, is the appointment valid until the next general election, November 2002, [or] until the expiration of the seat? Second, if the appointment is valid only until the next general election, how can a member be elected to fulfill the remaining term if no one filed a petition for this seat by July fifteenth. If a petition was not filed by July fifteenth, does the election automatically revert to the provisions for special elections found in South Carolina Code Section 7-13-190? Finally, if prior to the vacancy, there were three seats up for election, and four candidates filed for the seats, and the candidates who received the top three seats are elected to the board, can the fourth candidate, who received the lowest number of votes, be considered to serve the remaining vacant term?

The central issue with respect to your inquiry is what is meant by the term "next general election" as used in Act 445 of 2000.

Law / Analysis

Several principles of statutory construction are pertinent. First and foremost, the elementary and cardinal rule of statutory construction is to ascertain and effectuate the actual intent of the General Assembly. Horn v. Davis Elec. Constructors, Inc., 307 S.C. 559, 415 S.E.2d 634 (1992). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. See, Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Chas., 295 S.C. 408, 368 S.E.2d 899 (1988).

In addition, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid absurd consequences or unreasonable results. U.S. v. Rippetoe, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

In this instance, it would constitute an impossibility to effectuate Act No. 445 of 2000 if the term "next general election" is interpreted to mean the general election of 2002. The statute requires that "[a]ny person who wishes to become a candidate for election to the board shall file a petition of at least two hundred fifty qualified electors residing in the district with the Dorchester County

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Election Commission not later than twelve o'clock on July fifteenth or if July fifteenth falls on a Saturday or Sunday, not later than twelve o'clock noon on the following Monday." As I understand the situation, such requirement cannot now occur because the vacancy was only recently created.

Moreover, with respect to the filling of vacancies, the statute specifies that "a successor must be elected in the same manner provided in this act for the unexpired term or for the full term as the case may be." (Emphasis added). Thus, it appears the Legislature did not contemplate reliance upon some other statute such as § 7-13-190 (provision for special elections in cases of resignation, death or removal) for the filling of a vacancy. Accordingly, we must search for an interpretation of Act No. 445 of 2000 which is capable of filling a vacancy occurring by death regardless of when such death may have occurred during the year.

There is authority to support the proposition that the term "next general election" does not necessarily mean the next general election in point of time. See, Privette v. Grinnell, 191 S.C. 376, 4 S.E.2d 305 (1939) (term "next general election" does not mean next in point of time, but next general election for Clerks of Court as determined by Constitution). The phrase "next general election" has been held to mean the next regular election at which the officer or class of officers is to be chosen. Wainwright v. Fore, 22 Okl. 387, 97 P. 831. In State ex rel. Halbach v. Claussen, 250 N.W. 195 the Court concluded that the appointee appointed to fill a vacancy in an elected office would continue to serve until the next general election at which the vacancy could be legally filled rather than the next ensuing general election.

The Supreme Court of Pennsylvania has concluded that procedural requirements for holding a primary and general election "could not be varied because of later occurring vacancies." See, Eagen v. Smith, 366 Pa. 501, 78 A.2d 801 (1951), citing Commonwealth v. Blankenburg, 218 Pa. 339, 67 A. 645.

Of course, this Office has consistently stated that all doubts in construing a statute should be resolved in favor of holding an election. The problem in this instance is the requirement of Act No. 445 of 2000 which mandates that in order for a candidate to have his or her name placed on the ballot, the candidate must file a petition containing the signatures of at least 250 qualified electors by July 15. Such provision is so specific it cannot be viewed as merely directory in nature. An election held without following these mandatory requirements could well be deemed invalid by a court, resulting in a futile act which imposes a substantial cost upon the taxpayers of the school district.

Thus, it would appear that the most reasonable interpretation is to construe the phrase "next general election" as used in Act No. 445 of 2000 as the "next available general election" when all requirements of the statute for holding an election can be met. In this instance, therefore, the appointment to fill the school board vacancy by a majority of the House members and a majority of the Senators representing District 2 would be extended for the remainder of the term – in other words, until 2004.

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In terms of who the legislative delegation chooses to appoint to fill the vacancy that is, of course, up to the delegation. I know of no prohibition precluding the consideration of or the appointment of a person who "received the lowest number of votes" for election of other members as the appointee to fill the vacancy.

I must emphasize that the conclusion herein is not free from doubt. Certainly, the phrase "next general election" could be construed as meaning the next in point of time. However, I believe our interpretation here is the most reasonable available. Of course, only a court could make a final determination of how Act No. 445 of 2000 should be applied in this instance.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



Robert D. Cook

Assistant Deputy Attorney General

RDC/an