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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 26, 1998

The Honorable Dwight A. Loftis
Member, House of Representatives
540 Sulpher Springs Road
Greenville, South Carolina 29611

Re: Informal Opinion

Dear Representative Loftis:

Your opinion request has been forwarded to me for reply. You have asked for an opinion as to the proper procedures to be followed in filling a vacancy on the Board of Fire Control for the Duncan Chapel Fire District.

In 1970, the General Assembly provided authority to conduct a referendum to create the Duncan Chapel Fire District in Greenville County and to provide for its creation in the event of a favorable vote. Act No. 1027 of 1970. The Act also established a board of fire control to be comprised of five members who shall be elected for terms of six years. Act No. 1027, Section 4. The Act was amended by Act No. 1085 of 1974. This Act altered the length of the term of office for the members elected in the 1974 general election. Unfortunately, neither of these acts provide a method for filling a vacancy in the office of board member. Thus, to find an answer to your question, attention must be focused on other provisions of law.

Problems, such as the one raised in your request, have been addressed by this Office in prior legal opinions. Specifically, in an opinion dated March 5, 1987, this Office was asked the proper procedure to fill a vacancy in the North Greenville Fire District's governing body. The enabling legislation of this District, like that of the Duncan Chapel Fire District, did not contain authority regarding the filling of vacancies on the board. This Office thoroughly researched the question and concluded that the law did not provide authority for the election or appointment of an individual to fill the

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vacancy and, therefore, the best way to resolve this dilemma may be by the adoption of a general law by the General Assembly providing for the filling of such vacancies.

The General Assembly provided clarification in this area through Section 8-1-150 of the South Carolina Code of Laws. This section provides:

Whenever a vacancy occurs in the membership of the governing body of a special purpose district or public service district, and the duties of the governing body are proscribed by law, and there is no provision for filling the vacancy, it must be filled in the same manner of original appointment or election for the remainder of the unexpired term.

Having clarified that the remainder of the unexpired term is to be filled by election, a determination must now be made as to whether the vacancy should be filled by special election or at the next general election. The law generally abhors vacancies in public office. Op. Atty. Gen. dated August 20, 1986. In the event of a vacancy in office and the procedure for filling such vacancy is not specifically dictated by law, public policy supports the right of the people to elect a successor as soon as possible. Op. Atty. Gen. dated April 2, 1997.

Based on the foregoing, it is my opinion that where, as here, the General Assembly has not specified whether the vacancy should be filled by special election or at the next general election, public policy would support a conclusion that the vacancy should be filled by special election. The procedures to be followed in conducting a special election are found in Section 7-13-190 of the Code of Laws.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General