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OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 22, 1999

Louise T. Scott, Ph.D., Chair
Board of Trustees
Wil Lou Gray Opportunity School
1430 Fairfax Road
Florence, South Carolina 29501

RE: Informal Opinion

Dear Dr. Scott:

Your opinion request has been forwarded to me for reply. You indicate that members of the Wil Lou Gray Opportunity School Board of Trustees have recently discussed the appropriate start date of their terms of office. You state:

Since I was re-elected to the Board by the South Carolina General Assembly on May 12, 1999, I will use my term as an example. After my election, I was administered the oath of office by the Florence County Clerk of Court. This document was returned to the Office of the Secretary of State. Upon receipt, the Secretary of State sent me my commission that stated that my term expired June 30, 2003.

Since I have used my term as an example, the question that I need to have clarified is the date that my new term actually begins.

The election of Board members is governed by S.C. Code Ann. § 59-51-30. This section provides in pertinent part as follows:

The Opportunity School is under the management and control of a board of fourteen trustees, twelve of whom must be elected by the General Assembly. The trustees so elected must be citizens of the State who are interested in the aims and ambitions of the school. ... Members of the board who are elected by the General Assembly shall serve for terms of four years and until their successors are elected and qualify. ... In case a vacancy occurs on the board among the elected members for any

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reason other than expiration of a term when the General Assembly is not in session, the Governor may fill it by appointment until the next session of the General Assembly at which time a successor must be elected for the remainder of the unexpired term. Elections to fill vacancies which are caused for any reason other than expiration of a term may be held earlier than the first day of April of the year the vacancy is filled.

The statute provides that members are to serve terms of four years. I have been informed by the Secretary of State's office that your prior term of office expired on June 30, 1999. I was also informed your new term of office began on July 1, 1999 and expires on June 30, 2003. The fact that you were elected by the General Assembly and took the oath of office prior to the expiration of your previous term does not mean that you began your new term of office before July 1, 1999. While this distinction may seem like legal hairsplitting where an individual is reelected to serve in the same capacity for an additional term of office, it is of utmost importance in situations where a person in newly elected or appointment to serve a term of office. Take for example the following scenario: You did not seek reelection to the board and another individual ran for your vacant seat for the term beginning on July 1, 1999. The General Assembly elected this individual on May 12, 1999 and the individual took the oath of office the next day. Since the individual was elected for a term of office beginning July 1, 1999, that individual would not have the authority to assume the office until that time. You would continue to serve on the board until the expiration of your term, in this case June 30, 1999. The fact the individual was elected and took the oath of office prior to July 1, 1999 does not change this status. See Op. Atty. Gen. dated June 10, 1991 (individual may take oath prior to date of commencement of term, but because term did not begin until July 1, individual could not exercise the powers of office until then). I note that in those situations where an individual is appointed or elected to fill an unexpired term of office, the individual's term would begin as provided by the statute.

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 best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General