

1979 WL 43187 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 28, 1979

***1 RE: Requested Attorney General's Opinion**

Mr. Ben C. Harrison
Attorney at Law
Post Office Box 1852
Spartanburg, South Carolina 29304

Dear Mr. Harrison:

You have requested an opinion of this Office concerning the method of selection of three (3) members of the Board of Trustees of Spartanburg County School District 6, whose current terms expire in March, 1980. You further state in your letter that the Spartanburg County Board of Education, on May 2, 1979, approved a motion limiting the tenure of district trustees to three (3) full consecutive appointed terms; moreover, you point out that one of the current trustees of School District 6 has already been appointed to serve more than three full consecutive terms, while the other two trustees, whose terms expire in March, 1980, have been appointed for less than three terms. Your question then, is whether § 21-4011, Code of Laws of South Carolina, 1962, allows for the election of only one or two district trustees and appointment of the remaining trustees, upon the expiration of the terms of three members in March, 1980.

Through legislative enactment, Spartanburg County is exempt from the general South Carolina statutes governing the composition and appointment of boards of school trustees. [§ 59-19-10, et seq., Code of Laws of South Carolina](#), 1976, as amended. Rather, school trustees in Spartanburg County are governed by § 21-4011, Code of Laws of South Carolina, 1962, which states in pertinent part:

In each of the school districts of Spartanburg County, as established by the County Board of Education, there shall be a board of trustees of nine members, who shall be appointed by the county board of education. Provided, however, that in not less than sixty days before the term of office of any trustee expires and in not more than thirty days after a vacancy occurs in the office of any trustee, the qualified electors of any school district may file with the county board of education a petition calling for an election to determine the successor or successors of such trustee or trustees or to determine the filling of the vacancy or vacancies of the unexpired terms.

In the event no such petition is filed within the time limits specified the county board of education shall appoint such trustee or trustees. (Emphasis added).

I am aware of no court decisions directed at § 21-4011, and this Office has had occasion to render only one opinion concerning that Code section (§ 21-4011 was originally contained in Act No. 857, Acts and Joint Resolutions of South Carolina, 1952, at § 6). That Attorney General's Opinion, authored by then Attorney General, T. C. Callison, discussed the regularity of conducting an election for members to succeed those whose terms are expiring; however, the opinion did not face the question of a possible election for only one or two trustees whose terms are expiring. Finally, Attorney General Callison determined that the county Board county hold an election to fill the vacancy for an unexpired term, but such election would be merely advisory. A copy of that opinion is enclosed.

*2 Act No. 857 of 1952 was amended by Act No. 699, Acts and Joint Resolutions of South Carolina, 1958. The sections dealing with selection of district boards of trustees were amended to the approximate form of § 21-4011. The 1958 amendment at Act No. 699 provides for the appointment or election of trustees upon either the expiration of the term of office of a trustee or after a vacancy occurs in the office of any trustee. Therefore, Act No. 699 of 1958 enlarged Act No. 857 of 1952 to allow the election or appointment, rather than mere appointment, to fill the seat of any trustee which becomes vacant prior to usual expiration. Act No. 699 of 1958, therefore, invalidates the conflicting portion of Attorney General Callison's Opinion discussed hereinabove.

The General Assembly has the authority and, in the case of Spartanburg County, has determined that appointment by the county board of education shall be the primary means of filling the seats on the various school districts of Spartanburg County. See generally 68 Am. Jur.2d Schools § 38. In the alternative, the legislature has provided for election of members of a board of trustees if certain prerequisites enumerated in the statute are fulfilled. With regard to such elections, § 21-4011 speaks in terms of the expiration of the seat of 'any trustee' and of a vacancy occurring in the 'office of any trustee.' Thereafter, the statute speaks in terms of calling an election, '. . . to determine the successor or successors of such trustee or trustees or to determine the filling of the vacancy or vacancies for the unexpired terms.' The General Assembly did not speak in terms of filling expired seats or vacancies of all trustees but rather of 'any trustee' in order to '. . . determine the successor or successors of such trustee or trustees or to determine the filling of the vacancy or vacancies for the unexpired terms.' The term 'any' is commonly defined as follows, 'One indifferently out of more than two' Webster's Third New International Dictionary, G. & C. Merriam Company (Springfield, Mass. 1976). Thus, the General Assembly did not envision that all expired seats must be determined in the same manner.

This conclusion is further borne out by reference to § 21-4012(1), Code of Laws of South Carolina, 1962, which statute provides:

The terms of office of the trustees shall be four years, provided, that the terms of the nine members of each board of trustees shall expire in the following manner: the terms of two members shall expire at the end of each succeeding year wherever possible and the terms of the remaining three members shall expire at the end of the fourth year. Nothing contained in this chapter shall prevent any trustee from succeeding himself whether his expiring term shall have been for four years or for a lesser term.

This statute indicates an intention of the legislature that members of boards of trustees serve coterminous staggered terms. Thus, § 21-4011 allows either appointment or election for any trustee's seat upon the expiration of a Trustee's term individually or of two or three trustees. Of course, should an election be sought for the seat held by only one trustee upon expiration, all other requirements of the statute concerning such election must be met.

*3 I trust that this opinion answers the questions you have posed; however, please call upon me if I can be of any further service to you on this matter.

With kind regards,
Sincerely,

Paul S. League
Assistant Attorney General

1979 WL 43187 (S.C.A.G.)