

1978 WL 35275 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 21, 1978

*1 Thomas O. Lawton, Jr., Esquire
Lawton, Myrick & Detrick
Attorneys at Law
P. O. Box 646
Allendale, SC 29810

Dear Mr. Lawton:

This is to reply to your request for an opinion from this Office construing the pertinent provisions of 60 STAT. Act No. ____ (R417, H3508), 1978, which provides:

'Section 1. There is hereby created the Allendale County Board of Education which shall consist of five members. One member shall be elected from and be a resident of each of the election districts from which members of the county council are elected. Members shall be elected in the general election for terms of four years and assume office on January second of the year following election; provided, however, that of those initially elected in 1978, two members shall serve until January 2, 1980, and three members shall serve until January 2, 1982. Length of terms for those initially elected shall be determined by lot at the first meeting of the elected board. The board is hereby constituted the board of trustees for the school district of Allendale County with all powers and duties prescribed by law for such boards of trustees and also such powers, duties and responsibilities as prescribed in [Section 59-15-10 of the 1976 Code.](#)'

Said Act provides that the Allendale County Board of Education shall consist of five members who are elected from each of the respective election districts. The initial terms of the elected members are staggered to provide continuity throughout an election year. Thus, under the terms of the statute, two of the newly elected board members will serve a one year term from January 2, 1979, until January 2, 1980. Three of the newly elected members shall serve a three year term from January 2, 1979, until January 2, 1982. After the expiration of these initial terms, subsequent terms of office will be for four years.

The Act provides that the 'length of terms for those initially elected shall be determined by lot at the first meeting of the elected board.' A lottery has been defined as a scheme by which a result is reached by some action or means taken, and in which result, man's choice or will has no part nor can human reason, foresight, sagacity, or design enable him to know or determine such results until the same has been accomplished. [State v. Schwemler, 154 Or. 533, 60 P.2d 938.](#) Any scheme which you devise which ensures that the initial term of office for each individual board member is determined solely by chance will comply with the statutory mandate. As an example, five equal sized pieces of paper could be placed in a hat. On three pieces of paper would be placed the words 'three year terms', and on two of the pieces of paper would be placed the words 'one term term'. The terms would then be determined by a draw of the hat. This is a mere example of a method for choosing terms and by no means limits the procedure which you must use.

Please do not hesitate to contact me if I can be of further assistance to you in this matter.

Sincerely,

*2 Frank H. DuRant
Assistant Attorney General

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