



ALAN WILSON
ATTORNEY GENERAL

June 22, 2020

Richard E. Thompson, Jr., Esq.
Thompson & King
P.O. Box 14230
Anderson, SC 29624

Dear Mr. Thompson:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I serve as local counsel to the Anderson County Board of Education. One of the duties of the board is to appoint replacement trustees to serve in the event a trustee dies, resigns, or a vacancy exists for any reason. See 1976 S.C. Code Section 59-19-60.

The duly elected trustee in the above referenced seat in Anderson County District Two recently died while in office. As a result of this vacancy, the county board has begun the process of selecting a replacement trustee.

A question has arisen as to how long the replacement trustee will serve; is it until a successor is elected in the 2020 general election or the 2022 general election? This question is believed to have arisen based on 1982 Act No. 509 and 1983 Act No. 227.

Law/Analysis

It is this Office's opinion that a court would hold a vacancy on one of the boards of trustees of the school districts of Anderson County is initially filled by appointment by the County Board of Education and that such an appointee only serves until a successor takes office on January first following the next general election. The 2019 supplement to the South Carolina Code Index to Local Laws cites Act 227 of 1983 (the "1983 Act") as the appropriate legislation to reference concerning vacancies on a school district board of trustees in Anderson County. The Act explicitly amended Act 509 of 1982, § 3 (the "1982 Act"). Section 3 of the 1982 Act read, "In case of a vacancy in the board of trustees, such vacancy shall be filled for the unexpired term by appointment by the County Board of Education." (emphasis added). The 1983 Act, however, amended this language to read, "In case of a vacancy in the board of trustees, such vacancy must

be filled by appointment by the County Board of Education until a successor is elected in the next General Election to take office on January first following the election." (emphasis added).

The request letter states that there is confusion regarding how long an appointee for a current vacancy in Anderson County District Two would serve. It is this Office's understanding that the term of office for the vacant seat on the board of trustees runs until December 31, 2022. Ultimately, the question asked is whether the general election in which the successor is elected would be the 2020 or 2022 general election.

It is this Office's opinion that a person appointed to fill a vacancy on a school district board of trustees in Anderson County only serves until a successor takes office on January first following the next general election; the appointee would not continue to hold the seat beyond this date for the remaining portion of the term of office. The 1983 Act expressly states an appointee serves "until a successor is elected in the next General Election to take office on January first following the election." The title of the 1983 Act provides further support for the conclusion that the legislature intended this act to potentially shorten the term appointees serve to a lesser time than the full unexpired term where it states "VACANCIES MAY BE FILLED ONLY UNTIL A SUCCESSOR IS ELECTED IN THE NEXT GENERAL ELECTION." (emphasis added). Because the 1983 Act expressly amended Section 3 of the 1982 Act which allowed appointees to serve the remainder of the vacant seat's term, it must be presumed that "the next general election" was not intended to mean the next general election at which the seat would be up for election had a vacancy not occurred. See TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something."); State v. Leopard, 349 S.C. 467, 472, 563 S.E.2d 342, 345 (Ct. App. 2002) ("[W]e must 'presume the legislature did not intend a futile act' when construing a statutory amendment."). Therefore, the 1983 amendment must be read to shorten the term of such appointments when there is more than one general election before the vacant seat's term expires. Because the request letter states that there is more than one general election before the vacant seat's term would expire, the appointee would serve in the vacant seat until the successor takes office on the January first following the first of those general elections.

The request letter notes that S.C. Code § 59-19-60 provides what appears to be a conflicting directive to fill vacancies in a school district board of trustees. In relevant part, Section 59-19-60 states, "Vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term by the county board of education in the same manner as provided for full-term appointments." *Id.* (emphasis added). When read in isolation, this statute may appear to conflict with the 1983 Act. However it must be read in conjunction with statutes addressing the same subject, namely the manner by which school district trustees are appointed. See Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468-69 (2010) ("It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.") (citations omitted). First, Section 59-19-30 authorizes county boards of education to appoint successor trustees to school district boards. Next, this appointment power's application is limited by

Section 59-19-40 which states that Section 59-19-30 “shall neither repeal, supersede nor annul any special act providing for the appointment or election of school trustees in any school district or in any of the several counties of the State.” As is discussed above, there are such special acts providing for the appointment of school trustees in the school districts of Anderson County. Therefore, the manner of full-term appointments under 59-19-30 and vacancy appointments in 59-19-60 should not be read to prevail over the 1983 Act. See Denman, supra (“[W]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.”).

Finally, an August 29, 1997 opinion addressed to Representative Daniel T. Cooper responded to several questions regarding the 1982 Act. See Op. S.C. Att’y Gen., 1997 WL 569131 (August 29, 1997). The final question addressed the manner of filling a vacancy on school district board of trustees in Anderson County. The opinion cited the 1982 Act to conclude that the County Board of Education appoints a successor “for the unexpired portion of the term.” Id. at 3. The opinion did not mention the 1983 Act nor that it explicitly amended the 1982 Act’s provisions regarding vacancy appointments. This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. See Op. S.C. Att’y Gen., 2017 WL 5203263 (October 31, 2017). This Office recognizes that the 1997 opinion was in clear error to rely on the 1982 Act’s provision regarding vacancy appointments running for the unexpired term because the 1983 Act had amended that specific provision. Therefore, the portion of the August 29, 1997 opinion regarding vacancy appointments is overruled.

Conclusion

It is this Office’s opinion that a court would hold a vacancy on one of the boards of trustees of the school districts of Anderson County is initially filled by appointment by the County Board of Education and that such an appointee only serves until a successor takes office on January first following the next general election. The 2019 supplement to the South Carolina Code Index to Local Laws cites Act 227 of 1983 (the “1983 Act”) as the appropriate legislation to reference concerning vacancies on a school district board of trustees in Anderson County. The 1983 Act states, “In case of a vacancy in the board of trustees, such vacancy must be filled by appointment by the County Board of Education until a successor is elected in the next General Election to take office on January first following the election.” (emphasis added). Therefore, as is discussed more fully above, a person appointed to a currently existing vacancy on a board of trustees would serve until an elected successor takes office on January 1st, 2021.

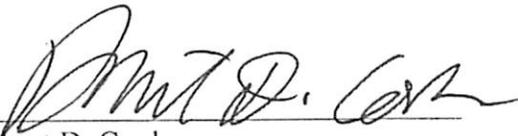
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Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General