

EDUCATION: SCHOOL BOARDS; SELECTION, ETC.

ELECTIONS: FEDERAL, COMMONWEALTH, AND LOCAL OFFICERS.

Vacancy created by resignation of commission-appointed school board member following approval by qualified county voters to change to elected school board and after initial election of members to school board composed of both elected and appointed members must be filled for unexpired term by school board selection commission.

Mr. C. Jeffers Schmidt Jr.

County Attorney for Lancaster County

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You inquire as to the correct procedure for filling a vacancy in the office of an appointed school board member whose resignation from the board is effective before expiration of the appointed board term, after the qualified voters of Lancaster County have approved changing to an elected school board and such board members initially have been elected.

You relate that Lancaster County has a five-member school board. In November 1992, the qualified voters of the county approved a referendum to change from a school board appointed by a school board selection commission to a school board elected by the voters. Three members of the school board were elected in November 1995. The terms of the two remaining appointed members are to continue until the November 1997 election. One of the two appointed members has resigned from office.

You relate that a question arises whether the replacement to the appointed school board vacancy is to be made pursuant to § 22.157.3(D) of the *Code of Virginia*,¹ or whether such vacancy shall be filled for the unexpired term either by appointment by the county governing body pursuant to § 22.144² or by the school board selection commission pursuant to § 22.139.³ You interpret § 22.144 to apply if a referendum is held and it is determined that the county governing body shall appoint the members of the county school board.⁴ You relate that Lancaster County has held a referendum and that the qualified voters of the county determined that the members of the county school board shall be elected. Therefore, you conclude that § 22.157.3(C) applies to the situation you present, and that, pursuant to your advice, the school board selection commission has been abolished by ordinance in your county.⁵ You have provided a copy of the applicable county ordinance providing that "[t]he school board selection commission is abolished on December 31, 1995."⁶

You ask whether this vacancy on the school board is to be filled by appointment by the circuit court, the board of supervisors or the school board selection commission.

In Chapter 5 of Title 22.1, the General Assembly has provided for school boards to be appointed either by a local school board selection commission⁷ or a local governing body,⁸ or to be elected by the registered voters.⁹ Section 22.139 provides that a school board selection commission is to fill a vacancy occurring in a school board appointed by the commission, and § 22.144 provides that a governing body is to fill a vacancy occurring in a school board appointed by the county governing body.

When an entire school board is elected, any vacancy in the office of a member of the board is to be filled in accordance with § 22.157.3(D) by a special election and an interim judicial appointment pursuant to §§ 24.2226 and 24.2227.

The second sentence of § 22.157.3(C) requires that, "[o]n December 31 following the first election of county school board members, the terms of office of the members of the school board in office through appointment shall expire and the school board selection commission, if there is one, shall be abolished." This sentence, therefore, clearly is directed to an election by the qualified voters of the county of an entire county school board. The third sentence of § 22.157.3(C), however, indicates a legislative intent that where the entire school board is not elected, and appointed members remain on the board, the terms of the appointed members shall continue during any transition period and shall be extended, if necessary, until the election of replacements:

If the entire school board is not elected at the first election of school board members, only the terms of the appointed members being replaced shall so expire and the terms of the appointed members being replaced at a subsequent election shall continue or be extended to expire on December 31 of the year of the election of the school board members replacing them.

Unlike the provision directed to elected school boards in the second sentence of § 22.1-57.3(C), the General Assembly has not altered the role of the school board selection commission in the third sentence of that section where appointed members remain on the board. In addition, the General Assembly has not repealed § 22.139 since the enactment of § 22.157.3 at its 1992 Session¹⁰ and subsequent amendments in 1993 and 1994.¹¹ The General Assembly is presumed to be aware of its own previous enactments.¹² In addition, "[r]epeal of a statute by implication is not favored, and, indeed, there is a presumption against a legislative intent to repeal where express terms are not used, or the later statute does not amend the former."¹³

A principle of statutory construction requires that statutes not be interpreted in ways that produce irrational consequences.¹⁴ Instead, statutes must be harmonized with other existing statutes where possible to produce a consistent, logical result that gives effect to the legislative intent.¹⁵ To determine legislative intent, statutes dealing with the same subject matter should, to the extent possible, be read together.¹⁶ Finally, § 22.139 provides that "[v]acancies occurring in the membership of the county school board shall be filled for the unexpired term by the school board selection commission." This is mandatory language.¹⁷

Accordingly, I am of the opinion that the school board selection commission must make the appointment to fill the office vacated by the appointed member of the county school board.¹⁸

¹Section 22.157.3(D) provides that "[a] vacancy in the office of school board member shall be filled pursuant to §§ 24.2226 and 24.2227."

The first sentence of § 24.2226(A) requires that "[a] vacancy in any elected constitutional or local office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election except as provided for certain towns by § 24.2228 or unless provided otherwise by statute or charter."

The first sentence of § 24.2227 states that "[w]hen a vacancy occurs in any constitutional or local elected office other than a local governing body, a majority of the judges of the

judicial circuit for the county or city in which it occurs shall make an interim appointment to the office until the vacancy can be filled by special election."

²The first sentence of § 22.144 provides: "If, in a referendum held as provided in § 22.142, it shall be determined that the members of the county school board shall be appointed by the governing body of the county, such governing body shall, by majority vote, thereafter appoint all members of the school board and the tie breaker, if any."

Section 22.142 provides for a referendum to be held on the question of changing the method of selecting county school board members by the qualified voters of the county.

³Section 22.139 provides that "[v]acancies occurring in the membership of the county school board shall be filled for the unexpired term by the school board selection commission."

⁴Section 2.1118 requires that when an opinion is requested from the Attorney General by a Commonwealth's or county attorney, such request "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

⁵Section 22.157.3(C) provides: "The terms of office for the school board members shall commence on January 1 following their election in the case of a county . On December 31 following the first election of county school board members, the terms of office of the members of the school board in office through appointment shall expire and the school board selection commission, if there is one, shall be abolished. If the entire school board is not elected at the first election of school board members, only the terms of the appointed members being replaced shall so expire and the terms of the appointed members being replaced at a subsequent election shall continue or be extended to expire on December 31 of the year of the election of the school board members replacing them."

⁶Lancaster County, Va., Ordinance § 526 (Oct. 27, 1994).

⁷Sections 22.134 to 22.140.

⁸Sections 22.141 to 22.146.

⁹Sections 22.157.1 to 22.157.5.

¹⁰See Ch. 594, 1992 Va. Acts Reg. Sess. 852, 85253.

¹¹See Ch. 878, 1993 Va. Acts Reg. Sess. 1330, 133032; Ch. 723, 1994 Va. Acts Reg. Sess. 1047, 104849.

¹²See *School Board v. Patterson*, 111 Va. 482, 48788, 69 S.E. 337, 339 (1910); Op. Va. Att'y Gen.: 1987-1988 at 1, 2; 1985-1986 at 65, 67; see also 17 M.J. *Statutes* § 46 (Repl. Vol. 1994 & Supp. 1995).

¹³*Albemarle County v. Marshall, Clerk*, 215 Va. 756, 761, 214 S.E.2d 146, 150 (1975) (quoting *Newmarket, &c., Co. v. Keyser*, 119 Va. 165, 170, 89 S.E. 251, 253 (1916)).

¹⁴*McFadden v. McNorton*, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952).

¹⁵1993 Op. Va. Att'y Gen. 214, 216; see also 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.06 (5th ed. 1992).

¹⁶*Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 679, 222 S.E.2d 793, 797 (1976) (ascertainment of legislative intention involves appraisal of subject matter, purposes, objects and effects of statute, in addition to its express terms).

¹⁷See 1986-1987 Op. Va. Att'y Gen. 300, 300, and opinions cited therein (use of word "shall" in statute generally indicates its procedures are intended to be mandatory).

¹⁸At its 1996 Session, the General Assembly amended § 22.157.3(D) to provide that, while subsection D applies to vacancies in the office of "any elected" school board member, school boards composed of both elected and appointed members are deemed to be "elected school boards." Ch. 873, 1996 Va. Acts Reg. Sess. The General Assembly also amended §§ 24.2226(A), 24.2227 and 24.2228(A) to provide that when a vacancy occurs on an elected school board, such vacancy shall be filled by an interim appointment by the remaining members of the school board until a special election is held to elect a replacement. *Id.* The General Assembly also added subsection C to § 24.2228, providing that school boards composed of both elected and appointed members "shall be deemed elected school boards." *Id.*