

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

September 11, 2015

Roy A'. Perkins, Esquire
Alderman, City of Starkville
Post Office Box 678
Starkville, Mississippi 39760-0678

Re: Appointment of School Board Member to Fill Vacancy on Newly
Consolidated Countywide Municipal Separate School District and Election
of Members from Outside the Municipal Corporate Limits

Dear Mr. Perkins:

Attorney General Jim Hood received your letter of request and assigned it to me for research and reply.

Facts

You cite and quote Mississippi Code Annotated Section 37-7-104.3 (Revised 2013) which consolidated the Oktibbeha County School District and the Starkville School District into a new countywide municipal separate school district effective July 1, 2015.

That statute also directs how future board members are to be selected and specifies that "upon the first occurrence of a vacancy on the board as a result of an expired term of an appointed board member, that vacancy shall become an elected position and shall be filled by the election of a board member as follows: the 2016 expiring term board member shall remain in office until January 1, 2017. In November 2016, an election will be held for a board member who resides outside of the incorporated municipal limits in the manner prescribed in Section 37-7-203, and the elected board member will take office for a five-year term beginning January 1, 2017. Subsequent board members shall be selected in the manner prescribed in Section 37-7-203."

After the consolidation, one school board member previously appointed by the City of Starkville governing authorities resigned prior to the expiration of her term.

The first occurrence of a vacancy on the board as a result of an expired term is on December 31, 2016.

Questions and Answers

Question 1: What is the proper procedure to fill the SOCSO seat vacated mid-term?

Response: In accordance with Section 37-7-203, a vacancy created by the resignation of a board member previously appointed by the municipal governing authorities shall be filled for the remainder of the unexpired term by appointment by the same governing authorities.

Question 2: What is the specific procedure to fill SOCSO board seats vacated after the election in November 2016?

Response: As indicated in our response to your first question, a vacancy created by the resignation of a trustee holding an appointed position must be filled for the remainder of the unexpired term by appointment by the municipal governing authorities.

Should a trustee who holds an elected position resign prior to the expiration of his or her term, an interim appointment of a trustee from the added territory must be made by the municipal governing authorities. The person so appointed will serve only until the next general election following his or her appointment, at which time a person shall be elected for the remainder of the unexpired term.

A vacancy created by virtue of an expiring term will, of course, be filled by appointment by the municipal governing authorities or election depending on whether the particular position is appointed or elected.

Applicable Law

Section 37-7-104.3 provides, in part:

(1) In Oktibbeha County, Mississippi, in which are located, as of January 1, 2013, two (2) school districts, there shall be an administrative consolidation of all of those school districts in the county into one (1) new countywide municipal separate school district to be designated as Starkville-Oktibbeha Consolidated School District which shall consist of the territory of the former Oktibbeha County School District and the Starkville School District, effective on July 1, 2015.

(2)(b) In the new consolidated school district there shall be a countywide municipal separate school district board of trustees, which shall consist of the existing members of the Board of Trustees of the Starkville School District. However, upon the first occurrence of a vacancy on the board as a result of an expired term of an appointed board member, that vacancy shall become an elected position and shall be filled by the election of a

board member as follows: the 2016 expiring term board member shall remain in office until January 1, 2017. In November 2016, an election will be held for a board member who resides outside of the incorporated municipal limits in the manner prescribed in Section 37-7-203, and the elected board member will take office for a five-year term beginning January 1, 2017. Subsequent board members shall be selected in the manner prescribed in Section 37-7-203. The Board of Supervisors of Oktibbeha County shall publish notice of the school board elections in some newspaper of general circulation in the county for at least three (3) consecutive weeks.

Section 37-7-203 provides, in part:

(1) Except as otherwise provided in subsection (3) of this section, the boards of trustees of all municipal separate school districts created under this chapter, either with or without added territory, shall consist of five (5) members, each to be chosen for a term of five (5) years, but so chosen that the term of office of one (1) member shall expire each year. In the event the added territory of a municipal separate school district furnishes fifteen percent (15%) or more of the pupils enrolled in the schools of such district, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate limits. In the event the added territory of a municipal separate school district furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the board of trustees of such school district shall be residents of the added territory outside the corporate limits.

All vacancies shall be filled for the unexpired terms by appointment of the governing authorities of the municipality; except that in the case of the trustees coming from the added territory outside the corporate limits, the person so appointed shall serve only until the next general election following his appointment, at which time a person shall be elected for the remainder of the unexpired term in the manner otherwise provided herein.

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September 11, 2015
Page 4

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION