



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE
(800) 368-8808

May 4, 1990

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
Charleston, West Virginia 25305

Dear Mr. Hechler:

You have requested an official Attorney General's opinion regarding the manner in which vacancies on the county board of education shall be filled. Prior to the 1989 West Virginia Legislature's shortening of the term for members of the Board of Education from six years to four years, the eligible candidates receiving the highest and the second highest number of votes were elected to full terms, and the next highest eligible candidate filled any unexpired term. However, inasmuch as the terms for members of the board of education have been shortened and are now four years instead of six, the possibility exists that a person chosen to fill an unexpired term will be in office longer than a person elected to fill a full term.

You specifically have inquired about the manner in which a vacancy shall be filled if it is longer than a full term. West Virginia Code § 3-5-6 (1990) states in pertinent part:

An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections as now provided by law, but upon a nonpartisan ballot printed for the purpose. At the election of members of the county board of education held in the year one thousand nine hundred eighty and each such election held thereafter, each candidate seeking the office shall be identified as to the magisterial district from which he is a resident. In such nonpartisan election the person receiving the highest number of votes shall be elected for a long term, and if more than one is to be elected for a long term, the one receiving the next highest shall be elected; and if more than two are to be elected the candidate or candidates receiving the next highest votes shall be declared elected for any short term or terms, as the case may be, to fill vacancies; but no

May 4, 1990
SHEET NO.

more than two such members shall be elected from the same magisterial district, and then only when such magisterial district does not have a holdover member of said board, and if such magisterial district has one holdover member on said board only one member shall be elected as aforesaid; and if more persons from a magisterial district receive the highest number of votes in said election, then of such persons only the person or persons having the highest vote who do not make the aggregate number of elected members and holdover members more than two from such magisterial district shall be declared elected, and the remaining members shall be declared from the highest from other magisterial districts; and in no event shall any member be declared elected from the same magisterial district wherein reside two already elected or otherwise qualified members of such board who will continue to hold office after the beginning of the term for which such election was held. (Emphasis added.)

In deciding questions regarding vacancies on the county board of education, the length of the term and not its characterization as unexpired or full is controlling. Therefore, where an unexpired term is longer than four years said term shall be filled by the candidate receiving the highest number of votes whose assumption of office will not create a situation in which more than two members from the same magisterial district are members of the board.

Provided that the candidate receiving the highest number of votes is not from the same magisterial district as two members of the board, said candidate will fill any unexpired term open on May 10, 1990 if said term is longer than four years. The aforesaid candidate will fill the unexpired term immediately following the certification of the primary. If the candidate receiving the highest number of votes is a member of the board at the time of the election, this candidate's assumption of the unexpired term will create a vacancy in his previous position. Since this vacancy did not exist at the time of the primary, W. Va. Code § 18-5-2 (1988) designates the manner in which the new vacancy is to be filled. In pertinent part § 18-5-2 states:

The board shall, by appointment, fill within thirty days any vacancy that occurs in its membership. Such appointments shall continue until the next primary or general election, whichever may first occur, when the voters shall elect a successor for the unexpired term.

May 4, 1990
SHEET NO

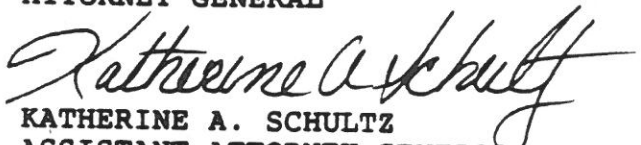
3

See also 46 Ops. Att'y Gen. 34 (September 14, 1954).

Any such appointment would take effect immediately but continue only until July 1, 1990. On that date, the candidate who received the second highest number of votes during the primary election would assume the office and fill the full term.

Sincerely,

ROGER W. TOMPKINS
ATTORNEY GENERAL


By KATHERINE A. SCHULTZ
ASSISTANT ATTORNEY GENERAL

RWT/KAS:pgf