

BATH COUNTY PUBLIC SCHOOLS

THEODORE R. SINCLAIR, SUPERINTENDENT

WARM SPRINGS, VA.

October 21, 1936

file

Supt. O. L. Emerick
Leesburg, Virginia

Dear Mr. Emerick:

Please accept my apology for not replying promptly to your inquiry of October 13. I have been unusually busy with several meetings and have just found time to consult our Commonwealth's Attorney in reference to the opinion of the Attorney General. I find that August 21 our Attorney for the Commonwealth, Julian K. Hickman, requested an opinion and that he received from the Attorney General a reply dated August 25. In his reply he enclosed a copy of a letter to Honorable W. O. Medley, Member House of Delegates, Lyon Village, Virginia, which covers six pages and has to do with the appointment in Arlington County. In his letter to Mr. Hickman the Attorney General also stated that it is his opinion that the same notice should be given for meetings to fill vacancies as is required for meetings for appointments for new terms.

Since the letter is quite long and since you may already have a copy of it, I am attempting to give you the gist of the letter which will also serve as a reference for us should we desire it in the future. I believe that you are familiar with the case in Arlington County, where it appears that new appointments were made by the Electoral Board in a meeting held first on July 3, 1936, and adjourned until July 6, 1936. I shall give you first the conclusion which is as follows:

"In conclusion, it is my opinion that the school trustee electoral board of Arlington County was, on July 6, 1936, without power to appoint a member of the county school board; that the failure to make the appointment on or prior to July 1, 1936, did not create a vacancy in the term of the member expiring on that day, and that such member, whose term would have expired if a successor had been appointed, continues to hold over until the school trustee electoral board is again empowered to appoint a successor, which, under the statute, is within sixty days prior to July 1, 1940."

The Attorney General bases his opinion partly on a decision of the Court of Appeals and partly on an opinion of the late Attorney General Saunders. Other quotations from his letter are as follows:

"This statute confers the power to appoint school board members for a term of four years beginning July 1, 1936, but expressly restricts the exercise of this power to the time preceding the beginning of the term of the school board members to be appointed."

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In reference to an appointment as Superintendent of the Poor in the case of Chadduck v. Burke, 103 Va. 694, "the Supreme Court of Appeals held this second appointment likewise void because not made during the time within which the circuit court was authorized by statute to make the appointment".

In reference to the question as to whether failure to appoint a successor to a school board member operates to cause a vacancy on the board which the Electoral Board may fill "it is said that the word "vacancy", as applied to an office, has no technical meaning; that an office is vacant or not according to whether it is occupied by one who has a legal right to hold it and to exercise the powers and perform the duties pertaining thereto. A vacant office is one without an incumbent. Vacancy in office is one thing and term is another. An office may be vacant and filled many times during a term of four years; but it cannot become vacant at the end of a term where the incumbent is authorized to hold over, for the instant the successor is duly appointed and has qualified he becomes entitled to the office, and there has been no hiatus at all. So long, therefore, as an office is supplied with an incumbent, in the manner provided by the Constitution or law, who is legally qualified to exercise the powers and perform the duties which appertain to it, the office is not vacant. Section 106 of the Act under consideration, contemplates and has reference alone to vacancies occurring during the term of an office, by death, resignation, removal and the like. It does not refer to nor contemplate the filling of an office for the ensuing term, upon the expiration of the preceding term; that was fully provided for by section 95 of the same Act, which has already been adverted to".

You may be interested in our particular situation. For more than a year one of our very best members has insisted that he would not accept reappointment. For some little time prior to July 1 and since that time there has been considerable opposition to another member on the part of a number of people in his rather thickly settled farm neighborhood. I had no conferences with any members of the Electoral Board prior to July 1, but since July 1 one member told me frankly that the appointment was allowed to go by with the hope of persuading the first member to continue and because reappointment of the second member might be unpopular and because there appeared to be no better qualified person available in his district. Later, this member told one of the members of our Board that there was considerable criticism of the failure of the Board to make the appointments for the present term. Later, in order to relieve the embarrassment of the Electoral Board, the four individuals on the School Board joined in a letter of resignation, stating that the resignation was made in order to remove any possible legal difficulty. This was after the receipt of the Attorney General's letter to the Attorney for the Commonwealth.

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After giving the proper notice our Electoral Board met last Saturday, October 17, elected two new members to fill the places of the two former members referred to above and reelected the two members who were willing to serve and against whom there was no opposition.

Very sincerely yours,



Theodore R. Sinclair

TRS/DT

Div. Supt.

Oct. 23.

(away 22 N D.)