



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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SCHOOLS AND SCHOOL DISTRICTS:
A Vacancy in the Office of
Regional Superintendent For
a Single County Region is
Filled Under the Provisions
of The School Code For the
Unexpired Term

Honorable C. Brett Bode
State's Attorney
Tazewell County
Court House
Pekin, Illinois 61554

Dear Mr. Bode:

This responds to your request for an opinion, the need of which results from the recent vacancy in the Office of Superintendent of Educational Service Region for Tazewell County, which is a single county region. You asked the following four questions.

- "1. Is the vacancy filled pursuant to Section 3-4 of the School Code, and does the appointee serve out the unexpired term of the deceased predecessor?"

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2. Do the provisions of Article 7-11.1 of the Election Code as added by P.A. 79-1281 on July 9, 1976, apply to the Office of Superintendent of Educational Service Region for a single county region?
3. Assuming that the provisions of 7-11.1 of the Election Code apply to the Office of Superintendent, must the person nominated from each of the political parties' Central Committee meet the statutory requirements set forth in Section 3-1 of the School Code?
4. Assuming the provisions of Section 7-11.1 apply to the Office of Superintendent, would the person elected on November 2, 1976, assume the Office immediately upon his election thereby replacing the appointee of the Chairman of the County Board, or would he assume Office on the first Monday in August as provided in Section 3-1 of the School Code?"

I am of the opinion that under section 3-4 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 3-4) that the presiding officer of the county board, with the advice and consent of the county board, fills the vacancy in the Office of Superintendent of Educational Service Region by appointment and that the appointee serves out the entire unexpired term. As a consequence, the provisions of The Election Code, which you refer to, do not apply.

Section 3-4 of The School Code provides in part as follows:

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"When the office of county superintendent of schools becomes vacant, the presiding officer of the county board, with the advice and consent of the county board, shall fill the vacancy by appointment. The clerk shall notify the person so selected of his appointment. * * * "

In an opinion dated November 7, 1947 (1947 Ill. Att'y. Gen. Op. 52), one of my predecessors advised that a person appointed under the provisions of this section holds such office for the entire unexpired term. He based his conclusion on the view that this provision in The School Code was specific in nature and prevailed over the general provisions of The Election Code. I agree with this conclusion.

This conclusion is further supported by the actions of the General Assembly in amending the provisions of The Election Code. The general provision of The Election Code with regard to filling vacancies in county offices is section 25-11. (Ill. Rev. Stat. 1975, ch. 46, par. 25-11.) This provision was amended by Public Act 79-118 to provide that the vacancies in county offices should be filled by appointment of the county central committee of the political party of which the incumbent was a candidate at the time of his election, rather than the chairman of the county board. That same Act, in addition to amending The Election Code, also amended the several statutory provisions relating to the State's Attorney,

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the coroner, the county clerk, the sheriff, the county treasurer, and others to provide that vacancies in these offices should be filled by appointment as provided in The Election Code. The Act made no reference at all to the superintendent of an educational service region.

The argument that the provisions of The Election Code apply is that under section 7-4 of The Election Code, a county officer is defined to include an officer to be voted for by the qualified electors of the entire county. This could be read to include the regional superintendent since he is elected in this case by all the electors in Tazewell County. Provisions of article 7 relate to the making of nominations by political parties and become relevant only when there is a vacancy to be filled at an election. The article does not determine when a vacancy exists. Because the vacancy in question has been filled in accordance with The School Code and for the unexpired term, there is no need to make nominations to fill it.

I note that under section 3A-6 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 3A-6) that a vacancy in the office of regional superintendent of a multi-county region

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is filled by the first assistant regional superintendent. This section specifically provides that he serve as regional superintendent for the balance of the unexpired term. The section further provides that if he does not qualify to be regional superintendent, the regional board of school trustees shall appoint a qualified person to fill the vacancy. It is quite clear here that the vacancy is filled for the entire unexpired term. I see no reason of public policy for creating more distinctions between superintendents of single county regions and multi-county regions than are required by a clear reading of the statutory provisions.

Because of my opinion on the first two questions, there is no need to consider your last two questions. However, the appointee must meet the qualifications of section 3-1 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 3-1) regardless of the procedure under which he assumes office.

Very truly yours,

A T T O R N E Y G E N E R A L