

Jul 06 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2019-CP-04-01118
Appellate Case No.: 2020-000003

Phillip Ashley, Kevin Craft, and Jimmy Ouzts.....Respondents.

v.

Anderson County School District Two Board of Trustees.....Appellant.

RECORD ON APPEAL

David T. Duff (SC Bar #1768)
David N. Lyon (SC Bar #100676)
DUFF | FREEMAN | LYON, LLC
P.O. Box 1486
Columbia, SC 29202
(803) 790-0603

Kenneth L. Childs (SC Bar #1217)
kchilds.lawoffice@gmail.com

ATTORNEYS FOR APPELLANT

Kurt Tavernier (SC Bar #12991)
Law Offices of Kurt Tavernier, P.A.
117 West Benson Street
Anderson, SC 29624
(864) 222-9142

Bruce A. Byrholdt (SC Bar #1071)
Byrholdt Drawdy
2315 N. Main Street, Ste. 117
Anderson, SC 29621
(864) 261-3977

ATTORNEYS FOR RESPONDENTS

INDEX

Index	i
Order, filed December 23, 2019	1
Amended Order, filed November 27, 2019	7
Order, filed November 15, 2019	13
Order, filed September 19, 2019	19
Order, filed July 1, 2019	22
Summons and Complaint, filed June 14, 2019	24
Motion for Temporary Stay, filed June 14, 2019	31
Defendant’s Return to Motion for Temporary Stay, filed June 25, 2019	33
Affidavit of Bonnie Knight, filed June 25, 2019	39
Affidavit of William “Stu” Shirley, filed June 25, 2019	52
Defendant’s Answer and Counterclaim, filed June 28, 2019	59
Defendant’s Motion for Summary Judgment and Memorandum in Support of Summary Judgment, filed July 18, 2019	67
Plaintiff’s Brief and Exhibits, filed July 18, 2019	94
Defendant’s Response to Plaintiff’s Brief, filed July 30, 2019	128
Defendant’s Motion to Alter or Amend Judgment, filed November 19, 2019	132
Plaintiff’s Return to Defendant’s Motion to Alter or Amend Judgment, filed November 25, 2019	135
Hearing Transcript of June 27, 2019	137
Certificate of Counsel	149

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	C.A. No. 2019-CP-04-01118
	)	
Phillip Ashley, Kevin Craft, and	)	
Jimmy Outzs,	)	
	)	
Plaintiffs,	)	ORDER
	)	
v.	)	
	)	
Anderson County School District	)	
Two Board of Trustees,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to the Defendant's Rule 59(e) motion, the Court amends its prior order as follows.

I.

This declaratory judgment action presents the question of whether the revocation of a resignation from an elected school board member was valid when the revocation letter stated it was to be "effective immediately." For the reasons stated below, the Court finds the school board member's resignation was valid and effective.

II.

On or about May 14, 2019, Stu Shirley (Shirley), a member of the Anderson County School District Two Board of Trustees (the School Board), sent an email announcing his resignation from the School Board. The email was titled "Subject: Resignation" and contained the following statement: "Therefore, effective immediately, I resign."

Then, on May 15, 2019, the Belton News Chronicle, a local newspaper, published the story notifying the public of the resignation. Two days later, on May 17, 2019, Shirley submitted a letter

to the former board chair, attempting to rescind his previous resignation. This Declaratory Judgment action followed.

III.

The Court should give words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

“Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

Based on the plain language of the applicable statute, S.C. Code Ann. § 8-1-145, Shirley's resignation was effective on May 14, 2019—the date he sent the resignation letter. S.C. Code Ann. § 8-1-145 states “a person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.” This statute has not been interpreted by any Court in this state. With that being said, a plain reading

of this statute makes the resignation of an official effective if (1) it was submitted in writing and (2) is made effective on a specific date.

Turning to the facts of the case at hand, Shirley sent his resignation via email. An email in this context certainly constitutes a writing as envisioned by S.C. Code Ann. § 8-1-145. Further, Shirley’s email states “Therefore, effective immediately, I resign.” This statement indicates an effective date, which makes it sufficient to effect a resignation on the date of his email—May 14, 2019. Therefore, the Court finds the resignation valid based on a plain reading of S.C. Code Ann. § 8-1-145.

IV.

The previous order issued by this Court contained a discussion of the issue of “acceptance” as set forth in *State ex. rel Jernigan v. Stickley*. The Defense argues that, although the email indicated an immediate effective date, the resignation was ineffective because it was not accepted by the School Board. This argument is rooted in the only case to have addressed this issue, *State ex. rel Jernigan v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908). *Stickley*, which was decided over 100 years ago in 1908, held that “Until the tender or offer to resign is accepted by the proper authority, it can be withdrawn.” *State ex. rel Jernigan v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908). Thus, under *Stickley*, for a resignation to become effective, the additional element of acceptance must be satisfied. *See Id.*

The Court in *Stickley* noted its decision was made in the absence of a statute when it stated “[i]n the absence of statute this rule is supported by the better reasoning and greater weight of authorities . . .” *Stickley*, 61 S.E. 213 (1908). This discussion of the lack of a guiding statute followed an exhaustive discussion of other jurisdiction’s decisions on the effectiveness of a resignation. Thus, it is important to note S.C. Code Ann. § 8-1-145, enacted in 1990, makes no

mention of an acceptance requirement, but rather puts the onus on the official to resign “on a specific date.”

Further, there is no authority to indicate that a formal board measure had to be taken for acceptance to occur. While the Court recognizes the existence of policies set in place by the School Board that require: (1) 30 days’ notice for resignation and (2) the School Board take a vote before taking action—these policies merely govern procedure and have no bearing on S.C. Code Ann. § 8-1-145. Moreover, requiring the School Board to take a formal vote to accept the “immediately effective” resignation of a fellow member would only foster further political infighting among the School Board and deprive the children of Anderson County District 2 of the important tasks the School Board undertakes.

Finally, the Defense relies heavily on the opinions issued by the Attorney General. While the Court respects the analysis and judgment of the Attorney General in this case, its decisions are not binding on this Court. Furthermore, the Court recognizes that the Attorney General was forced to issue its opinion based on a request that did not include a comprehensive recitation of the issue before the Court. Thus, while the Attorney’s General analysis was proper under *Stickley*, the Court finds that it was improper in light of the enactment of S.C Code Ann. § 8-1-145.

III.

While interesting to the Court, the issue of acceptance is hereby removed from the prior order because, unlike the facts in *Stickley*, a statute now exists to guide the Court in its decision. Accordingly, due to the effective resignation of Shirley, the Court finds there to be a vacancy on the Board of Anderson County School District 2 and orders the vacancy be filled pursuant to the relevant laws of South Carolina.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

December 23, 2019



Anderson Common Pleas

Case Caption: Phillip Ashley , plaintiff, et al VS Anderson County School District
Two Boards Of Trustees

Case Number: 2019CP0401118

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-12-23 15:22:16 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	C.A. No. 2019-CP-04-01118
	)	
Phillip Ashley, Kevin Craft, and	)	
Jimmy Outzs,	)	
	)	
Plaintiffs,	)	AMENDED ORDER
	)	
v.	)	
	)	
Anderson County School District	)	
Two Board of Trustees,	)	
	)	
Defendant.	)	
_____	)	

This order hereby amends the order submitted by the Court on November 15, 2019 in the above captioned case.

I.

This declaratory judgment action presents the question of whether the revocation of a resignation from an elected school board member was valid when: (1) the revocation letter stated it was to be “effective immediately” (2) the school board removed the members name and photo from school board’s website; and (3) closed his email account. For the reasons stated below, the Court finds the school board member’s resignation was valid and accepted before revocation occurred.

II.

On or about May 14, 2019, Stu Shirley (Shirley), a member of the Anderson County School District Two Board of Trustees (the School Board), sent an email announcing his resignation from the School Board. The email was titled “Subject: Resignation” and contained the following statement: “Therefore, effective immediately, I resign.”

Immediately after the email was received, the School Board removed Shirley's name and photograph from its website. Additionally, the School Board closed and deleted Shirley's email account. The next day, May 15, 2019, the Belton News Chronicle, a local newspaper, published the story notifying the public of the resignation.

Two days later, on May 17, 2019, Shirley submitted a letter to the former board chair, attempting to rescind his previous resignation. This Declaratory Judgment action followed.

III.

The Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

"Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

Based on the plain language of the applicable statute, S.C. Code Ann. § 8-1-145, Shirley's resignation was effective on May 14, 2019—the date he sent the resignation letter. S.C. Code Ann. § 8-1-145 states “a person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.” This statute has not been interpreted by any Court in this state. With that being said, a plain reading of this statute makes the resignation of an official effective if (1) it was submitted in writing and (2) is made effective on a specific date.

Turning to the facts of the case at hand, Shirley sent his resignation via email. An email in this context certainly constitutes a writing as envisioned by S.C. Code Ann. § 8-1-145. Further, Shirley's email states “Therefore, effective immediately, I resign.” This statement indicates an effective date, which makes it sufficient to effect a resignation on the date of his email—May 14, 2019. Therefore, the Court finds the resignation valid based on a plain reading of S.C. Code Ann. § 8-1-145.

IV.

The Defense argues that, although the email indicated an immediate effective date, the resignation was ineffective because it was not accepted by the School Board. The Defense's argument is rooted in the only case to have addressed this issue, *State ex. rel Jernigan v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908). *Stickley*, which was decided over 100 years ago in 1908, held that “Until the tender or offer to resign is accepted by the proper authority, it can be withdrawn.” *State ex. rel Jernigan v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908). Thus, under *Stickley*, for a resignation to become effective, the additional element of acceptance must be satisfied. *See Id.*

Although acceptance is not required under S.C. Code Ann. § 8-1-145, the Court believes it prudent to discuss the issue nonetheless. To begin, the court in *Stickley* noted its decision was made

in the absence of a statute when it stated “[i]n the absence of statute this rule is supported by the better reasoning and greater weight of authorities . . .” *Stickley*, 61 S.E. 213 (1908). Thus, it is important to note S.C. Code Ann. § 8-1-145, enacted in 1990, makes no mention of an acceptance requirement, but rather puts the onus on the official to resign “on a specific date.” To the extent that acceptance is required, however, the court finds that the School Board’s actions were sufficient acceptance of Shirley’s resignation. Within a day, the School Board removed Shirley’s name, photo, and information from its website, and also closed his email account. This is in contrast to *Stickley*, where no such action was taken to accept the resignations tendered in that case until almost a month later. *See* 61 S.E. at 213 (1908). Thus, as to the issue of acceptance, the case at hand is distinct from *Stickley*.

Moreover, in 1908, the only method of acceptance available was for the Wardens of Port Royal or their Officers to physically meet and accept the resignation. *Stickley* even goes so far as to discuss in dicta whether or not “[t]he possession of the Paper on which his resignation was written” was a requirement of rescission. *Id.* Obviously the advancements in technology and the addition of S.C. Code Ann. § 8-1-145 distinguish the present case from *Stickley*. In the present case, the School Board immediately removed the personal information, picture and contact information of the resigned member. This action by The School Board or agents of the board was public and is the functional equivalent of a physical meeting and, therefore, is tantamount to an acceptance of the resignation.

Further, there is no authority to indicate that a formal board measure had to be taken for acceptance to occur. In today’s technology driven society, in fact, methods such as the ones taken by the School Board have become the norm for indicating a person has left the employ of an organization. While the Court recognizes the existence of policies set in place by the School Board

that require: (1) 30 days' notice for resignation and (2) the School Board take a vote before taking action—these policies merely govern procedure and have no bearing on S.C. Code Ann. § 8-1-145. Moreover, requiring the School Board to take a formal vote to accept the “immediately effective” resignation of a fellow member would only foster further political infighting among the School Board and deprive the children of Anderson County District 2 of the important tasks the School Board undertakes. Accordingly, the affirmative acts of removing Shirley’s name, photo, and email address from the School Board’s website were sufficient acceptance under *Stickley*.

Finally, the Defense relies heavily on the opinions issued by the Attorney General. While the Court respects the analysis and judgment of the Attorney General in this case, its decisions are not binding on this Court. Furthermore, the Court recognizes that the Attorney General was forced to issue its opinion without the guidance of case law deciphering S.C. Code Ann. § 8-1-145. Thus, while the Attorney’s General analysis was proper under *Stickley*, the Court finds that it was improper in light of the enactment of S.C Code Ann. § 8-1-145.

III.

Accordingly, due to the effective resignation of Shirley, the Court finds there to be a vacancy and orders the vacancy be filled pursuant to the relevant laws of South Carolina.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

November 25, 2019



Anderson Common Pleas

Case Caption: Phillip Ashley , plaintiff, et al VS Anderson County School District
Two Boards Of Trustees

Case Number: 2019CP0401118

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-11-26 17:46:17 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	C.A. No. 2019-CP-04-01118
	)	
Phillip Ashley, Kevin Craft, and	)	
Jimmy Outzs,	)	
	)	
Plaintiffs,	)	ORDER
	)	
v.	)	
	)	
Anderson County School District	)	
Two Board of Trustees,	)	
	)	
Defendant.	)	
_____	)	

I.

This declaratory judgment action presents the question of whether the revocation of a resignation from an elected school board member was valid when: (1) the revocation letter stated it was to be “effective immediately” (2) the school board removed the members name and photo from school board’s website; and (3) closed his email account. For the reasons stated below, the Court finds the school board member’s resignation was valid and accepted before revocation occurred.

II.

On or about May 14, 2019, Stu Shirley (Shirley), a member of the Anderson County School District Two Board of Trustees (the School Board), sent an email announcing his resignation from the School Board. The email was titled “Subject: Resignation” and contained the following statement: “Therefore, effective immediately, I resign.”

Immediately after the email was received, the School Board removed Shirley’s name and photograph from its website. Additionally, the School Board closed and deleted Shirley’s email

account. The next day, May 15, 2019, the Belton News Chronicle, a local newspaper, published the story notifying the public of the resignation.

Two days later, on May 17, 2019, Shirley submitted a letter to the former board chair, attempting to rescind his previous resignation. This Declaratory Judgment action followed.

III.

The Court should give words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

“Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

Based on the plain language of the applicable statute, S.C. Code Ann. § 8-1-145, Shirley’s resignation was effective on May 14, 2019—the date he sent the resignation letter. S.C. Code Ann. § 8-1-145 states “a person holding an office in this State filled by a vote of qualified electors may

submit a written irrevocable resignation from that office which is effective on a specific date.” This statute has not been interpreted by any Court in this state. With that being said, a plain reading of this statute makes the resignation of an official effective if (1) it was submitted in writing and (2) is made effective on a specific date.

Turning to the facts of the case at hand, Shirley sent his resignation via email. An email in this context certainly constitutes a writing as envisioned by S.C. Code Ann. § 8-1-145. Further, Shirley’s email states “Therefore, effective immediately, I resign.” This statement indicates an effective date, which makes it sufficient to effect a resignation on the date of his email—May 14, 2019. Therefore, the Court finds the resignation valid based on a plain reading of S.C. Code Ann. § 8-1-145.

IV.

The Defense argues that, although the email indicated an immediate effective date, the resignation was ineffective because it was not accepted by the School Board. The Defense’s argument is rooted in the only case to have addressed this issue, *State ex. rel Jernigan v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908). *Stickley*, which was decided over 100 years ago in 1908, held that “Until the tender or offer to resign is accepted by the proper authority, it can be withdrawn.” *State ex. rel Jernigan v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908). Thus, under *Stickley*, for a resignation to become effective, the additional element of acceptance must be satisfied. *See Id.*

Although acceptance is not required under S.C. Code Ann. § 8-1-145, the Court believes it prudent to discuss the issue nonetheless. To begin, the court in *Stickley* noted its decision was made in the absence of a statute when it stated “[i]n the absence of statute this rule is supported by the better reasoning and greater weight of authorities . . .” *Stickley*, 61 S.E. 213 (1908). Thus, it is important to note S.C. Code Ann. § 8-1-145, enacted in 1990, makes no mention of an acceptance

requirement, but rather puts the onus on the official to resign “on a specific date.” To the extent that acceptance is required, however, the court finds that the School Board’s actions were sufficient acceptance of Shirley’s resignation. Within a day, the School Board removed Shirley’s name, photo, and information from its website, and also closed his email account. This is in contrast to *Stickley*, where no such action was taken to accept the resignations tendered in that case until almost a month later. *See* 61 S.E. at 213 (1908). Thus, as to the issue of acceptance, the case at hand is distinct from *Stickley*.

Moreover, in 1908, the only method of acceptance available was for the Wardens of Port Royal or their Officers to physically meet and accept the resignation. *Stickley* even goes so far as to discuss in dicta whether or not “[t]he possession of the Paper on which his resignation was written” was a requirement of rescission. *Id.* Obviously the advancements in technology and the addition of S.C. Code Ann. § 8-1-145 distinguish the present case from *Stickley*. In the present case, the School Board immediately removed the personal information, picture and contact information of the resigned member. This action by The School Board or agents of the board was public and is the functional equivalent of a physical meeting and, therefore, is tantamount to an acceptance of the resignation.

Further, there is no authority to indicate that a formal board measure had to be taken for acceptance to occur. In today’s technology driven society, in fact, methods such as the ones taken by the School Board have become the norm for indicating a person has left the employ of an organization. While the Court recognizes the existence of policies set in place by the School Board that require: (1) 30 days’ notice for resignation and (2) the School Board take a vote before taking action—these policies merely govern procedure and have no bearing on S.C. Code Ann. § 8-1-145. Moreover, requiring the School Board to take a formal vote to accept the “immediately

effective” resignation of a fellow member would only foster further political infighting among the School Board and deprive the children of Anderson County District 2 of the important tasks the School Board undertakes. Accordingly, the affirmative acts of removing Shirley’s name, photo, and email address from the School Board’s website were sufficient acceptance under *Stickley*.

Finally, the Defense relies heavily on the opinions issued by the Attorney General. While the Court respects the analysis and judgment of the Attorney General in this case, its decisions are not binding on this Court. Furthermore, the Court recognizes that the Attorney General was forced to issue its opinion without the guidance of case law deciphering S.C. Code Ann. § 8-1-145. Thus, while the Attorney’s General analysis was proper under *Stickley*, the Court finds that it was improper in light of the enactment of S.C Code Ann. § 8-1-145.

III.

Accordingly, due to the effective resignation of Shirley, the Court finds there to be a vacancy and orders a special election in accordance with S.C. Code Ann. § 8-1-145.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

November 13, 2019



Anderson Common Pleas

Case Caption: Phillip Ashley , plaintiff, et al VS Anderson County School District
Two Boards Of Trustees

Case Number: 2019CP0401118

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-11-15 13:35:13 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	C.A. No.: 2019-CP-04-1118
Phillip Ashley, Kevin Craft and	)	
Jimmy Ouzts, in their capacities as	)	
the elected Trustees of Anderson	)	
County School District Two Board	)	
Of Trustees,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR SUMMARY JUDGMENT
Anderson County School	)	
District Two Board of Trustees,	)	
	)	
Defendant.	)	

This matter is before the Court pursuant to the Defendant's Motion for Summary Judgment as to the Plaintiffs' claim and the Defendant's counterclaim filed on July 18, 2019. The Defendant's stated grounds for its motion are there exists no genuine issues of material fact and it is entitled to judgment as a matter of law.

Summary judgment is appropriate only if the moving party shows there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCF. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313S.C. 4, 493, 443 S.E.2d 392, 394 (1994).

In addition, summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 53 S.E.2d 331, 333 (2002).

The Supreme Court has cautioned that "summary procedures should be used sparingly ... where motive and intent play lead roles ... It is only when witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised." *Pollar v. Columbia Broadcasting Sys., Inc.*, 368 U.S. 464, 473, 82 S. Ct. 486, 491 (1962).

In light of the above, a thorough review of the parties' briefs, and the parties' agreement to waiver as to a hearing and a determination of the merits of the Declaratory Judgement action, the Court believes there is the existence of a dispute as to the alleged facts and the applicability of law to the instant matter.

Based upon the foregoing, The Defendant's motion is hereby denied.

IT IS SO ORDERED!

J. Cordell Maddox,
Circuit Court Judge,
Tenth Judicial Circuit

Anderson, South Carolina

September , 2019



Anderson Common Pleas

Case Caption: Phillip Ashley , plaintiff, et al VS Anderson County School District
Two Boards Of Trustees

Case Number: 2019CP0401118

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-09-19 13:54:15 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees

Plaintiffs,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-01118

PROPOSED ORDER

Before the court is Plaintiff's motion for a temporary stay on any and all action by the Defendant, Anderson County School District Two Board of Trustees. The motion was filed in conjunction with Plaintiffs' Declaratory Judgment action seeking a determination as to whether Board Member Stu Shirley submitted an irrevocable resignation from the Board such that there is now a vacancy on the Board.

The court is taking the Plaintiff's motion under advisement. Board member Shirley may continue to participate, as a lawful board member, in any business before the Board with the exception that he may not vote on any decision to hire or fire District level administrators.

The Court will expedite the Declaratory Judgment action. All responsive pleadings and briefs must be filed by July 18, 2019.

AND IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
Presiding Judge

Date _____



Anderson Common Pleas

Case Caption: Phillip Ashley , plaintiff, et al VS Anderson County School District
Two Boards Of Trustees

Case Number: 2019CP0401118

Type: Order/Stay

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-07-01 14:42:41 page 2 of 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT
C.A. No.: 2019-CP-04-

Phillip Ashley, Kevin Craft and)
Jimmy Ouzts, in their capacities as)
the elected Trustees of Anderson)
County School District Two Board)
Of Trustees,)

Plaintiffs,

V.

SUMMONS

Anderson County School)
District Two Board of Trustees,)
)
Defendant.)

TO THE DEFNDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action a copy of which is herewith served upon you, which was filed in the Office of the Clerk of this Court on the below mentioned date; and to serve a copy of your answer to the Complaint upon the subscriber at their offices, 117 West Benson Street, Anderson, South Carolina 29624 or 215 N. Main Street, Anderson, South Carolina 29621, within thirty days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

Law Offices of Kurt Tavernier, P.A.

s/ Kurt Tavernier

Kurt Tavernier, (SC Bar #12991)
110 East Benson Street
Anderson, South Carolina 29624
(864) 222-9142

Byrholdt & Drawdy

s/Bruce A. Byrholdt

Bruce A. Byrholdt, (S.C. Bar No. 1071)
2315 N. Main Street
Anderson, South Carolina 29621
864-261-3977
Attorneys for the Plaintiffs

Attorney for the Plaintiff

Anderson, South Carolina

September 21, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	C.A. No.: 2019-CP-04-
Phillip Ashley, Kevin Craft and	)	
Jimmy Ouzts, in their capacities as	)	
the elected Trustees of Anderson	)	
County School District Two Board	)	
Of Trustees,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	COMPLAINT
	)	
Anderson County School	)	
District Two Board of Trustees,	)	
	)	
Defendant.	)	

The Plaintiffs complaining of the Defendant would show unto the Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiffs are residents and citizens of the County of Anderson, State of South Carolina. The Plaintiffs are also the duly elected trustees of their respective areas of Anderson County School District Two and members of the Anderson County School District Two Board of Trustees.
2. The Plaintiffs are informed and believe the Defendant Anderson County School District Two Board of Trustees (hereinafter referred to as the "Defendant Board") is the legally constituted governing body of the school district for the public school district established by the General Assembly of South Carolina, known as Anderson County School District Number Two, within the confines of the County of Anderson, State of South Carolina.
3. The Plaintiffs are informed and believe the Defendant Board is responsible to the South Carolina State Board of Education, it is also, by law and tradition, responsible to the community it serves and represents but further, to carry out the will of the community in matters of public education.

4. The Plaintiffs are informed and believe that 1982 Act 509 and 1983 Act 227 provide for a board membership consisting of seven (7) trustees elected from four (4) areas within the designated district.
5. The Plaintiffs are informed and believe that on or about May 14, 2019, a member of the Defendant Board, Stu Shirley, tendered an email, a copy of which is attached hereto as Exhibit "A", bearing **Subject: Resignation**, dated May 13, 2019, to the acting Chairperson of the Defendant Board, the other trustees of the Defendant Board, Dr. Richard Rosenberger, Elaine Rider with the News Chronicle, a local newspaper, Susan Shirley and Lester McCall. The herein described resignation contained the language "Therefore, effective immediately, I resign."
6. The Plaintiffs are informed and believe that Shirley is one of two trustees elected from Area 1 of the public school district and was a current member of the Defendant Board.
7. The Plaintiffs are informed and believe that pursuant to §8-1-145, of the South Carolina Code of Laws the document submitted by Shirley was a valid and effective resignation of his position as a trustee of the Defendant Board. They are further informed and believe that Shirley's resignation created a vacancy on the Defendant Board.
8. The Plaintiffs are informed and believe the Defendant Board pursuant to the 1983 Act 227 requires the submitted resignation be forwarded to the Anderson County Board of Education along with a suggestion of a qualified replacement for the vacancy.
9. The Plaintiffs are informed and believe Shirley submitted correspondence, dated on or about May 17, 2019, attempting to rescind his previously submitted resignation. However, this email was directed solely to the Defendant Board Chairperson. A copy of which is attached hereto as Exhibit "B". The Plaintiffs are further informed and believe this attempted rescission was "accepted" by the Defendant Board Chairperson in violation of Defendant Board policy.

10. The Plaintiffs are informed and believe the attempted rescission of the resignation was not a valid rescission as the resignation was effective immediately and that at least three (3) days had passed since the resignation email had been widely disseminated by Shirley and others.
11. The Plaintiffs are informed and believe the actions of the Defendant Board Chairperson, the acting Board Chairperson and the concurring members of the Defendant Board have been negligent and derelict in their respective capacities. They have been negligent and derelict for their willful failure to submit the Shirley resignation to the Anderson County School Board along with the name of a suitable candidate for the unexpired term in a timely manner. They have been negligent and derelict for arbitrarily choosing which policies in which to adhere to so as to benefit their respective personal and collective agendas all of which constitutes collusion and a civil conspiracy.
12. The Plaintiffs are informed and believe that although the Defendant Board has been requested to get a judicial determination of the validity of the Shirley resignation, it has refused and only sought legal opinion which upon information and belief is not legally binding and did not fully incorporate or address all pertinent facts and policies.
13. The Plaintiffs are informed and believe that until such time as there has been a judicial determination of the validity of the Shirley resignation any decision of the Defendant Board in which Shirley participated may be null and void.
14. The Plaintiffs are informed and believe the Court is vested with jurisdiction over the parties and the subject matter of this action and venue is proper.

FOR A FIRST CAUSE OF ACTION

TEMPORARY RESTRAINING ORDER

15. Each and every allegation previously alleged is realleged as if fully set forth herein.

16. The Plaintiffs are informed and believe that until such time as there has been a judicial determination of the validity of the Shirley resignation any decision of the Defendant Board in which Shirley participates may be subject to be overturned or void. In light of the financial and personnel decisions that have been recently been made and the will be made in the immediate future, there is a substantial impact on the public interest.
17. The Plaintiffs are informed and believe that it is proper for the Court to grant injunctive relief in the form of a temporary stay of all matters before the Defendant Board until such time as the Court has rendered its judgment regarding the validity of the Shirley resignation as the potential for irreparable harm may occur, as Shirley has already participated in financial and personnel matters which would be placed in jeopardy should it be determined his resignation is valid.
18. The Plaintiffs are informed and believe that given the applicable law, policies and the facts of the instant matter it is more likely than not they will prevail upon a thorough consideration of the merits and pertinent issues.
19. The Plaintiffs are informed and believe that in consideration of the consequences of the Court's denial of a temporary stay would place the Defendant Board and its recent actions at extreme risk when one weighs there is no other adequate remedy at law.

FOR A SECOND CAUSE OF ACTION

DECLARATORY JUDGMENT

20. Each and every allegation previously alleged is realleged as if fully set forth herein.
21. The Plaintiffs are informed and believe it is necessary they bring this action on their own behalf and on behalf of all trustees of the Defendant Board as well as the Anderson County School District Two and its residents for a declaratory judgment, in consideration of all applicable law and both Defendant Board's and State School Board policies, regarding the following: a.

Whether the Shirley resignation was valid; b. Whether, under the circumstances the resignation as tendered was capable of rescission; and/or c. Whether, under the circumstances the resignation as tendered had to be accepted or acted upon in any manner.

WHEREFORE, the Plaintiffs pray for the following relief:

1. An Order of the Court issuing a temporary stay of all matters before the Defendant Board until such time as the Court has rendered its determination regarding the validity of the Shirley resignation.
2. A declaratory judgment declaring the validity of the Shirley resignation pursuant to both South Carolina law and both Defendant Board and State School Board policy.
3. For such other and further relief as the Court may deem just and proper.

Law Offices of Kurt Tavernier, P.A.

s/ Kurt Tavernier

Kurt Tavernier (S.C. Bar No. 12991)
117 West Benson Street
Anderson, South Carolina 29624
864-222-9142

Byrholdt & Drawdy

s/Bruce A. Byrholdt

Bruce A. Byrholdt, (S.C. Bar No. 1071)
2315 N. Main Street
Anderson, South Carolina 29621
864-261-3977
Attorneys for the Plaintiffs

Anderson, South Carolina

June 14, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	C.A. NO.: 2019-CP-04-
Phillip Ashley, Kevin Craft and	)	
Jimmy Ouzts,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR TEMPORARY STAY
Anderson County School	)	
District Two Board of Trustees,	)	
	)	
Defendant.	)	

TO THE DEFENDANT ABOVE NAMED:

NOTICE IS HEREBY GIVEN that the Plaintiff shall move before the Presiding Judge, on the 27th day of June, 2019 at 3:00 o'clock p.m. for an Order of the Court granting the Plaintiffs the relief sought in the Complaint until a final hearing in this matter may be held. More particularly the Plaintiffs, by and through their undersigned attorneys, hereby move for an order directing immediate entry of stay as to any matters before the Defendant until such time as the Court has ruled on the validity of the Shirley resignation. It is proper for the Court to issue a temporary stay as the potential for irreparable damage is substantial until time as there has been a judicial determination of the validity of the Shirley resignation any decision of the Defendant Board in which Shirley participates may be subject to be overturned or void. In light of the financial and personnel decisions that have been recently been made and the ones that will be made in the immediate future, there is a substantial impact on the public interest.

The Plaintiffs are informed and believe that given the applicable law, policies and the facts of the instant matter it is more likely than not they will prevail upon a thorough

consideration of the merits and pertinent issues. The consequences of the Court's denial of a temporary stay would place the Defendant Board and its recent actions at extreme risk when one weighs there is no other adequate remedy at law. This motion is based upon the pleadings, affidavits and additional documents submitted in support.

Respectfully Submitted,

Law Offices of Kurt Tavernier, P.A.

s/ Kurt Tavernier

Kurt Tavernier (S.C. Bar No. 12991)
117 West Benson Street
Anderson, South Carolina 29624
(864) 222-9142

Byrholdt & Drawdy

s/Bruce A. Byrholdt

Bruce A. Byrholdt, (S.C. Bar No. 1071)
2315 N. Main Street
Anderson, South Carolina 29621
864-261-3977
Attorney for the Plaintiffs

Anderson, South Carolina

June 14, 2019

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees,

Plaintiffs,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**DEFENDANT’S RETURN TO
PLAINTIFFS’ MOTION FOR
TEMPORARY STAY**

STATEMENT OF THE CASE

Defendant Anderson County School District Two Board of Trustees (hereinafter, “Defendant Board” or “District Two Board”) submits this Return in opposition to Plaintiffs’ Motion for Temporary Stay.

This matter arises out of a dispute between the Plaintiffs, three members of the seven-member Anderson County School District Two Board of Trustees, and the Defendant Board of Trustees. The dispute is over whether a vacancy was created when Board Member William R. (“Stu”) Shirley initially sought to resign from the Board on May 14, 2019, but then changed his mind three days later on May 17 and withdrew the resignation, before there was ever any effort by the Board to accept it. The S.C. Attorney General, in an opinion dated June 4, 2019, has concluded that Shirley was entitled to withdraw his resignation and that no vacancy was created as a result of his actions. Mr. Shirley has attended all Anderson Two Board meetings since May 13.

Plaintiffs filed this declaratory judgment action on June 14, 2019, asking this Court to declare Shirley's resignation irrevocable and thus binding under Board policy and South Carolina law. Plaintiffs also ask the Court to issue a "temporary stay of all matters before the Defendant Board" until such time as the Court ruled on the Declaratory Judgment. (Compl. "WHEREFORE" Paragraph, Item 1) (emphasis added)). Plaintiffs contemporaneously filed a separate motion for temporary relief, reiterating the injunctive relief sought in their Complaint.

Defendant Board submits this Return in opposition to the motion for a temporary stay on the grounds that Plaintiffs cannot demonstrate a likelihood of success on the merits and that denial of the stay will not result in irreparable harm to Plaintiffs. It does not appear under the circumstances of this case that the factor related to absence of an adequate remedy at law is pertinent or necessary to address.

STANDARD

Plaintiffs' request for a temporary stay is, in effect, a request for a preliminary injunction, enjoining the Defendant Board, and thereby the District, from operating at all. An injunction is a drastic remedy issued by a court in its discretion in order to prevent irreparable harm to a plaintiff. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). While the court has power to issue injunctive relief, this remedy is extreme and should be applied cautiously. Clearly, in this case, a stay of any and all Board action is exceedingly drastic and totally unjustified.

To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). Plaintiffs are unable to demonstrate these elements. The sole purpose of an injunction is to preserve the status quo. *See*

Mailsources, LLC. v. M.A. Bailey & Assoc., Inc., et al., 356 S.C. 363, 368, 588 S.E.2d 635, (Ct. App. 2003); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). In this case, Plaintiffs are not seeking to preserve the status quo; they are seeking to alter it by removing a duly elected member of the Board, who, despite initially wanting to resign, changed his mind.

ARGUMENT

A. Plaintiffs cannot demonstrate that they will likely succeed on the merits of their declaratory judgment action.

The issue in Plaintiffs’ declaratory judgment action is a purely legal one, based on facts which are not disputed—whether Board Member Shirley lawfully withdrew his resignation before it was accepted.

As an initial matter, Mr. Shirley’s attempted resignation was not in accord with Board policy and, therefore, was probably not valid to begin with. District Two Board Policy BBBC provides that a board member who intends to resign “will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board at least 30 days prior to the effective date of said resignation.” (Exhibit A). Thus, Mr. Shirley’s email stating he wished to resign effective immediately did not comply with the Board’s own operating procedure and was therefore not effective.

Even if Mr. Shirley’s email was an effective announcement of his intent to resign, he then promptly rescinded his action. Shirley’s withdrawal of his resignation **prior to it ever being accepted by his Board** was proper and valid, as the June 4, 2019, opinion from the South Carolina Attorney General makes clear. (See Copy of AG Opinion - Exhibit B). In a comprehensive nine-page opinion, the Attorney General’s office concluded that a member of a school district board of trustees may revoke a tendered resignation prior to the resignation being

accepted by the board. Based on legal precedent, particularly the decision in *State v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908), prior AG Opinions, and an analysis of the import of Code Section 8-1-145, the Attorney General opined as follows: “It continues to be the opinion of this Office that a resignation submitted by a public officer is **not effective until it has been accepted by the public body that is authorized to receive it.**” See Exhibit B, p. 8 (emphasis added). Regarding Section 8-1-145, which refers to an “irrevocable” resignation, the Attorney General’s opinion states: “... a court would likely find Section 8-1-145(A) does not prohibit an office holder from submitting a written resignation that is revocable prior to acceptance by the proper authority.” Nothing in Board policy or state law indicates that Mr. Shirley’s resignation, if valid in the first place, was not revocable or that it could not be withdrawn prior to his Board accepting it. If the resignation is revocable, it can be rescinded.

While a court is not bound by Attorney General opinions, such opinions “should not be disregarded without cogent reason.” *Price v. Watt*, 280 S.C. 510, 513, n. 1, 313 S.E.2d 58, 60, n. 1 (Ct. App. 1984). There is no cogent reason to disregard the Attorney General’s opinion in this case. Defendant Board fully adopts and incorporates herein the logic and reasoning of the Attorney General’s June 4 opinion, which clearly establishes that Shirley’s resignation was lawfully rescinded. For the reasons set forth in the AG opinion, Plaintiffs cannot demonstrate a likelihood of success on the merits of their claim that Shirley was not permitted to withdraw his resignation. For this reason alone, the request for a stay should be denied.

B. Plaintiffs cannot demonstrate that they will suffer irreparable harm if the stay is not granted.

Plaintiffs cannot demonstrate that they will suffer irreparable harm if the stay is not granted. And the relative harm to the Defendant Board if a stay enjoining all Board action is granted greatly outweighs any claimed harm to the Plaintiffs if the stay is not granted. The

Affidavit of Bonnie Knight, Acting Board Chair, makes this point clear. Plaintiffs, a minority faction of the Board, certainly will not be individually or personally harmed if the stay is not granted. As Board members, Plaintiffs will be “harmed,” if at all, in no way different than the other Board members if the stay is not granted.

As explained in Ms. Knight’s Affidavit, the real harm that would occur in this case would be caused by the entry of stay enjoining all Board action until the Court determines Mr. Shirley’s status as a Board member. As the Knight Affidavit provides in paragraph 14:

The request made by the Plaintiffs that all matters coming before our Board of Trustees be stayed until the Court decides Mr. Shirley’s status is totally unjustified and may cause serious harm to the Board and the District. Routine matters, such as filling teacher vacancies during the summer, need to be acted upon as promptly as possible. Such routine matters are not likely to require that Mr. Shirley cast the deciding vote, yet the Board would be prevented from acting, until the Court rules. If all Board action is stayed, even emergency action could not be taken, such as actions needed in the event a severe storm or a fire caused serious damage to facilities. It is the District, not the Plaintiff Board members, that may be irreparably harmed if the stay is granted.

Accordingly, not only will the Plaintiffs not be irrevocably harmed (if harmed at all) in any way unique to them if a stay is not entered, but entry of a stay will harm the Board and the District in ways that may be significant if not irreparable.

C. Plaintiff’s cannot demonstrate that they have no adequate remedy at law.

Under the circumstances of this case, Defendant Board questions whether the third factor—absence of an adequate remedy at law—has any applicability in the analysis of whether injunctive-type relief is justified. To the extent the Court believes that factor should be considered, it is Plaintiffs’ burden to demonstrate that they have no adequate legal remedy. If the concern is that votes may be taken and outcomes reached which the Plaintiffs would have opposed, and as to which Mr. Shirley would cast the deciding votes, those votes could be

reconsidered and the results potentially altered through participation of Shirley's successor - if it were ever to be determined that Shirley was not a lawful member of the Board because he had resigned. Such results would be considered adequate remedial action, obviating any current need for injunctive relief.

CONCLUSION

Plaintiffs' request for temporary injunctive relief in the form of a stay of all Board action should be denied for two obvious and clear reasons: 1) they cannot make a sufficient showing of likelihood of success on the merits; and 2) Plaintiffs cannot establish irreparable harm if the stay is not issued.

Respectfully submitted,

DUFF & CHILDS, LLC

By: s/David N. Lyon

David N. Lyon (S.C. Bar #100676)

Kenneth L. Childs (S.C. Bar #1217)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

Email: dlyon@duffchilds.com

Email: kchilds@duffchilds.com

Attorneys for Defendant Anderson County School
District Two Board of Trustees

June 25, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	TENTH JUDICIAL CIRCUIT
Phillip Ashley, Kevin Craft and Jimmy Ouzts, in their capacities as the elected Trustees of Anderson County School District Two Board of Trustees	C.A. No.: 2019-CP-04-01118
Plaintiff,	AFFIDAVIT OF BONNIE KNIGHT
v.	
Anderson County School District Two Board of Trustees,	
Defendant.	

PERSONALLY APPEARED before me, Ms. Bonnie Knight, and after being first duly sworn, deposes and says:

1. I am over 18 years of age and have personal knowledge of the matters set forth in this Affidavit.

2. I am a member of the Anderson County School District Two Board of Trustees. I was elected to the Board in November 2018, in what is known as Area 4. My current term runs from 2018-2022.

3. I am a product of the Anderson County School District Two system, having graduated from Belton Honea-Path High School.

4. I attended Erskine College where I received a Bachelor of Arts degree in Elementary Education and added certification in Special Education. Later in my career, I received a master's degree from Clemson University in Supervision and Administration.

5. I have worked in public education for 37 years. I taught for 19 years in North Carolina and South Carolina. For the last 18 years of my career, I worked in various administrative positions in District Two, serving as an Assistant Principal at Belton Middle School, Principal at Belton Elementary School, and Director of Instruction at the District level.

6. I presently serve as Vice Chair of the District Two Board of Trustees and am Acting Chair while our Chairperson, Brenda Cooley, is recuperating from serious health conditions. I have served as Acting Board Chair for the last two months.

7. I was present and presiding at the Board meeting on May 13, 2019. The Board was discussing matters related to the contract of our Superintendent, Dr. Rosenberger. After a long executive session, we returned to public session and then adjourned the meeting. Some members of the audience were angry and hostile. I requested to be escorted to my car by security out of fear for my safety.

8. I became aware later that evening after the Board meeting that Mr. Shirley, one of the Board members, was especially upset. He felt he should resign from the Board, based on what

happened at the meeting. Mr. Shirley sent an email the next day stating that he wished to resign, but then three days later he changed his mind and stated that he wished to withdraw his resignation. The Board never acted to accept Mr. Shirley's resignation.

9. I was present and presiding at the Board meeting on May 22, when Mr. Joey Nimmer, the Executive Director of the Anderson County Board of Education, produced an opinion from an attorney with the White & Story law firm, which stated that Mr. Shirley was not permitted under South Carolina law to withdraw his May 14 emailed resignation, and that a vacancy existed on the Anderson Two Board.

10. Based on that opinion, Board Member Phillip Ashley, one of the Plaintiffs, made a motion to remove Mr. Shirley from the Board. The motion failed as a result of a tie vote, 3-to-3. Mr. Shirley chose not to vote.

11. I then asked for an opinion from the South Carolina Attorney General's Office as to Mr. Shirley's status as a board member.

12. On June 4, 2019, the Attorney General's Office issued its opinion in response to my request. A copy of that opinion is attached to this Affidavit as Exhibit A.

13. At our June 10, 2019 Board meeting, Mr. Shirley was allowed to take his seat and vote, based upon: 1) the Attorney General's Opinion; 2) the failed motion at the May 22nd meeting; and 3) a letter from the Anderson County Board Chairman stating there was no vacancy on the board. The Anderson County Board Chairman's letter is attached as Exhibit B.

14. The request made by the Plaintiffs that all matters coming before our Board of Trustees be stayed until the Court decides Mr. Shirley's status is totally unjustified and may cause serious harm to the Board and the District. Routine matters, such as filling teacher vacancies during the summer, need to be acted upon as promptly as possible. Such routine matters are not likely to require that Mr. Shirley cast the deciding vote, yet the Board would be prevented from acting, until the Court rules. If all Board action is stayed, even emergency action could not be taken, such as actions needed in the event a severe storm or a fire caused serious damage to facilities. It is the District, not the Plaintiff Board members, that may be irreparably harmed if the stay is granted.

15. Mr. Ashley's statement in his affidavit in support of a temporary stay that, without a stay, irreparable harm could occur, is based on conjecture and false assumptions. Mr. Ashley assumes that all matters coming before the Board which require action will be decided 4 - 3, with Mr. Shirley casting the deciding vote. He then implies, if it is found that Mr. Shirley's vote is not valid due to his resignation, that the Board's action would be invalid. These situations are speculative. In most cases, especially as to routine actions, like filling teacher vacancies before the new school year starts, or even urgent situations requiring Board action, Mr. Shirley will likely not be the deciding vote.

16. As Acting Chair, it is my belief that Mr. Shirley is a proper and much needed voting member of our Board, as the Attorney General has concluded. Halting all Board action on the assumption that the court will disagree with the Attorney General and invalidate certain Board actions seems ridiculous.

FURTHER AFFIANT SAITH NOT.

Signature: 

Name: Bonnie Knight

Title: Board Vice Chair

Appeared before me Bonnie Knight

SWORN to before me this 24th

Day of June 2019.

Bonnie Knight

Notary for the State of South Carolina

My Commission Expires: 11/13/2020



ALAN WILSON
ATTORNEY GENERAL

June 04, 2019

Mrs. Bonnie Knight
Acting Board Chairperson
Anderson County School District No. Two
10990 Belton-Honea Path HWY
Honea Path, South Carolina 29654

Dear Mrs. Knight:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

The administrator of the Anderson County Board of Education received a letter [from an attorney], concluding that there was a vacancy on our Board.

I believe [this] conclusion is incorrect under South Carolina law, and I am writing to you to request your opinion on this matter.

The factual background is as follows: William "Stu" Shirley was elected in November 2018, to a four-year term on our Board. After a contentious Board meeting on May 13, 2019, Mr. Shirley, on May 14, submitted an email resignation to our Board Chair On May 17, 2019, Mr. Shirley apparently had second thoughts about his tendered resignation and submitted to our Chairperson another letter rescinding his May 14 resignation. Both letters were sent to all members of our Board, and to the administrator, Mr. Nimmer of the Anderson County Board. On Wednesday, May 22, 2019, Mr. Nimmer received the attached letter ... stating under South Carolina law, the rescission of a resignation was not permitted and accordingly Mr. Shirley's seat was vacant.

[This] letter was provided to our Board at a special meeting on May 22, but our Board took no action on either of Mr. Shirley's letters.

It seems clear to me that [the letter's] conclusion is wrong. First, our Board has a policy BBBC ... providing that Board members may resign on thirty days' notice. Secondly, our Board never acted on Mr. Shirley's resignation or his letter of rescission. Thirdly, his rescission took place on May 17, only three days after the resignation letter.

EXHIBIT A

Mrs. Bonnie Knight
 Page 2
 June 04, 2019

My questions simply stated under these facts are: (1) does a vacancy exist on our Anderson Two Board? and (2) was Mr. Shirley's rescission effective and does he remain a member of the Board?

Law/Analysis

It is this Office's opinion that a court likely would hold a member of a school district board of trustees may revoke a tendered resignation before it is accepted. Answering whether a particular board member has vacated his office would require this Office to make factual determinations which are beyond the scope of this Office's opinions. See Op. S.C. Att'y Gen., 2012 WL 1371025, at *2 (April 11, 2012). Instead, this opinion will generally assume facts as provided in the request letter for purposes of providing legal analysis.

The following additional facts recounted in the request letter and attached materials are pertinent to this opinion. Board member Stu Shirley submitted a resignation letter on May 14, 2019 which explicitly stated it was "effective immediately." This letter was sent via email to recipients which appear to board members of Anderson County School District No. Two. On May 17, 2019, Stu Shirley sent a rescission letter sent to Brenda Cooley, chairperson for the board, withdrawing his resignation and asked, "Will you please relay this decision to the Anderson County Board and advise their position?" Mrs. Brenda Cooley replied May 17, 2019 acknowledging receipt of the rescission letter and stating she would notify the members of Anderson County School District Two board of trustees and the Anderson County Board of Education. There is no indication that either the Anderson County School District Two board of trustees or the Anderson County Board of Education accepted Stu Shirley's resignation before receiving notification of its withdrawal. On May 22, 2019, Joey Nimmer, Administrator of the Anderson County Board of Education, received an email from an attorney that analyzed whether a vacancy exists on the Anderson County School District Two board of trustees as a result of the resignation and rescission letters. Ultimately, the email concluded:

Relying on SC Code 8-1-145 and the plain language of the board member's May 14th resignation notice, it is fair to conclude that the resignation was effective as of May 14, 2019, and was irrevocable.* It then follows that there is a vacancy on Anderson School District Two's Board of Trustees, which must be filled by the Anderson County Board of Education.

It appears that the resolution to the questions presented in the request letter depends on whether S.C. Code Ann. § 8-1-145 does, in fact, mandate that the resignation letter is irrevocable such that Mr. Shirley could not withdraw it even before it was accepted. This Office has not identified any decisions of our state courts or prior opinions of this Office which have interpreted Section 8-1-145. Therefore, this opinion next examines how our state courts have addressed the issue of resignation and attempted rescission, this Office's prior opinions that have addressed similar circumstances, and relevant legislative acts, before applying the rules of statutory construction to interpret S.C. Code Ann. § 8-1-145.

Mrs. Bonnie Knight
 Page 3
 June 04, 2019

In State v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908), the South Carolina Supreme Court addressed the issue of which persons were authorized members of the town council of Port Royal in light of the resignations of several members, the withdraw of those resignations, and subsequent elections for those member's seats. The Court analyzed what the effect of an unconditional resignation is as follows:

The remaining questions presented by the petition and return all depend upon whether a public officer, who has tendered his resignation unconditionally, can withdraw the same before acceptance; or what is the effect of an unconditional resignation. On this question the authorities are not in accord. There is a line of cases maintaining the proposition that an unconditional resignation tendered to the authority entitled to receive it cannot be withdrawn. State v. Fitts, 49 Ala. 402; State v. Hauss, 43 Ind. 105, 13 Am. Rep. 384; State ex rel. Kirtley v. Augustine, 113 Mo. 21, 20 S. W. 651, 35 Am. St. Rep. 696; State v. Clarke, 3 Nev. 566. On the other hand at common law and in a great number of the states the doctrine prevails that the resignation of a public officer is not complete until it is either expressly or by implication accepted by the proper authorities. State v. Clayton, 27 Kan. 442, 41 Am. Rep. 418; Coleman v. Snads, 87 Va. 689, 13 S. E. 148; State v. Ferguson, 31 N. J. Law, 107; Van Orsdall v. Hazard, 3 Hill (N. Y.) 243; Edwards v. United States, 103 U. S. 471, 26 L. Ed. 314; Hoke v. Henderson, 15 N. C. 1, 25 Am. Dec. 677; 1 Dillon, Munic. Corp. (3d Ed.) 249. In the case of State v. Ancker, 2 Rich. Law, 245, this rule was applied to the resignation of certain officers and members of a church, the court saying: "The question is whether such a resignation has been made and accepted according to law, and in a way obligatory on all the parties to this controversy. To make it so there must have been both a resignation cum animo and an acceptance of it on the part of the acting and responsible government at the time." In the absence of statute this rule is supported by the better reasoning and the greater weight of authorities, and has been adopted by the Supreme Court of the United States. Edwards v. United States, 103 U. S. 471, 26 L. Ed. 314. **Until the tender or offer to resign is accepted by the proper authority, it can be withdrawn.** 1 Dillon, Munic. Corp. (3d Ed.) 249; State v. Clayton, 27 Kan. 442, 41 Am. Rep. 418, and note. Applying the foregoing principles of law to the undisputed facts of this case, **the resignation of Stickley as intendant was made to the proper authority to receive it, the wardens of the town, and if it had been promptly accepted by them, it could not have been recalled; but there was no attempted acceptance until nearly a month thereafter. In the meantime, certainly on the night of the third day after his resignation was tendered, at the request of a majority of the qualified voters of the town in mass meeting, and in the presence of F. W. Scheper, Jr., clerk and treasurer, he withdrew his resignation as intendant.** True he did not get possession of the paper on which his resignation was written. This was in the custody of Scheper, the clerk and treasurer; but the wardens of the town had notice of the public withdrawal of Stickley's resignation,

Mrs. Bonnie Knight
 Page 4
 June 04, 2019

and it was not necessary to make his withdrawal effectual that the formal paper resignation be secured by him. **Stickley having withdrawn his resignation before its acceptance by the wardens of which they had notice, under the principle heretofore announced he holds his position as intendant as against any election held after such withdrawal.**

Id. at 213 (emphasis added). The analysis above demonstrates that the Court considered and rejected the position that an unconditional resignation is irrevocable as soon as it is offered. Instead, the Court adopted the common law principle that resignations may be withdrawn at any time until the proper authority receives and accepts it. Further, in Rogers v. Coleman, 245 S.C. 32, 34, 138 S.E.2d 415, 417 (1964), the Court held that even when a public officer's resignation is accepted, he "continues in office until a successor is qualified where the statute or Constitution so provides."

This Office has repeatedly cited the Stickley decision when opining whether a resignation is effective or may still be revoked. This Office's July 10, 1986 opinion stated:

To have an effective resignation, the resignation must be tendered by the official and accepted by the appropriate governmental body ... There must be an intent on the part of the individual to resign. Furthermore, a resignation may be revoked at any time before the date upon which the resignation was to take effect. See Ops. Atty. Gen. dated November 28, 1941 and December 1, 1965; (enclosed) Jernigan v. Stickley, supra.

1986 S.C. Op. Att'y Gen. 245 (July 10, 1986). While the opinion above stated that a resignation may be revoked at any time before the effective date of the resignation, the General Assembly subsequently passed legislation that provided authority for calling a special election to fill the pending vacancy if the officer submits an "irrevocable resignation." 1988 Act No. 294, §1. The Act provided the following procedure to permit a special election:

Whenever any person holding an elective office in this State is elected or appointed to another office, the person may tender an irrevocable resignation to be effective at a future date, and an election may be held in accordance with applicable provisions of law to fill that office as if it had become vacant on the date the officeholder is certified to have won election to his new office. The newly elected official shall not take office until a vacancy occurs.

Id. A July 11, 1989 article published in The State newspaper described one such resignation and the legislative intent behind the Act as follows:

Rep. Hearn wants to remain in her House seat until Nov. 1, when she is schedule to replace Julius Murray as a member of the Alcoholic Beverage Control Commission as an appointee of Gov. Carroll Campbell. She announced last

Mrs. Bonnie Knight
 Page 5
 June 04, 2019

month that she would officially resign her House seat “on or before Oct. 31,” and sent a letter to [House Speaker] Sheheen with that information.

It used to be that an officeholder had to resign outright before any election could take place. But under a law passed last year, sponsored chiefly by Sen. Sherry Martschink, R- Charleston, the special election process can begin to replace a resigning officeholder once the official issues an irrevocable resignation for a future date.

...

Sen. Martschink said the intent was to apply to all people leaving elective office for another office, appointive or elective.

Rep. Hearn and the potential candidates for the House 76 seat say they don’t want the district to go without representation.

It takes 18 weeks from the time a “writ of election” is issued until a winner can be declared including time for primaries, the general election, certifications and appeals. ...

Clark Surratt, Special election remains on hold, The State, July 11, 1989, at 2-B. However, there were complaints that the Act was “ambiguous” because it created a vacancy that related back to the date an officeholder won election to a new office and did not provide when a vacancy would be deemed to occur if an office holder assumed an appointive position. Id. During the following legislative session, the General Assembly enacted 1990 Act No. 382 which repealed 1988 Act No. 294 and added Section 8-1-145 to the South Carolina Code.

Section 8-1-145 reads as follows:

- (A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.
- (B) An election must be held in accordance with the provisions of Section 7-13-190 or other applicable provisions of law to fill the office to be vacated as if the vacancy occurred on the date the written irrevocable resignation is submitted.
- (C) The newly elected official may not take office until the vacancy actually occurs.

S.C. Code Ann. § 8-1-145.

As stated above, this Office has not identified any decisions of our state courts or prior opinions of this Office which have interpreted Section 8-1-145 and therefore, will apply the rules

Mrs. Bonnie Knight
Page 6
June 04, 2019

of statutory construction as a matter of first impression. Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute "would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect." Duke Energy Corp. v. S. Carolina Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers."). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

Essentially, the question presented requires an interpretation of whether the phrase "may submit a written irrevocable resignation," in Section 8-1-145(A), prohibits an official from submitting a written resignation which may be rescinded prior to its acceptance by the proper authority as the Court upheld in State v. Stickley, *supra*. It is this Office's opinion that a court would likely find Section 8-1-145(A) does not prohibit an office holder from submitting a written resignation that is revocable prior to acceptance by the proper authority. First, the plain language of the subsection (A) uses the word "may" which is normally considered to be permissive, but can also be interpreted as "shall" in certain circumstances.

Ordinarily, the use of the word "may" in a statute signifies permission and generally means the action spoken of is optional or discretionary. Robertson v. State, 276 S.C. 356, 278 S.E.2d 770 (1981). But, when the question arises whether "may" is to be interpreted as mandatory or permissive in a particular statute, legislative intent is controlling. *Id.* And the use of the word "may" in a statute can be interpreted to mean "shall" *Id.* This is especially so where the original statute used the term "shall" but a later amendment uses the term "may", and there is no explanation for the change in terminology. *Id.*

T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 402, 450 S.E.2d 87, 95 (Ct. App. 1994). Because 1988 Act No. 294, §1 originally used the word "may" in a manner that suggests it was intended to be permissive ("may tender an irrevocable resignation to be effective at a future date"), this tends to support the interpretation that the General Assembly intended to maintain the procedure as one which is permissive rather than mandatory when it codified Section 8-1-145(A).

Mrs. Bonnie Knight
 Page 7
 June 04, 2019

In fact, 1988 Act No. 294 and the statements by Senator Martschink demonstrate that the procedures for calling a special election in Section 8-1-145 are not intended to address every resignation of a public official in all instances. Rather, the legislative intent behind the adoption of Section 8-1-145 appears to address the limited situation where a public officer who holds an elective office intends to accept another office and, in such a case, to develop a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law. Subsection (B) explicitly states that the elections called thereunder must comply with the provisions of Section 7-13-190. Section 7-13-190 establishes the schedule for filing, nominations, and holding a special election according to when the vacancy in office occurs. When an officer submits an irrevocable resignation, Section 8-1-145(B) allows the scheduled vacancy to be backdated to start "on the date the written irrevocable resignation is submitted." Section 7-13-190's schedule for holding a special election can begin at an earlier date and shorten or eliminate the vacancy in office caused by the resignation. Section 8-1-145(C) anticipates that the specific date set in an irrevocable resignation may be so far in advance that the special election may be held before the official has left his seat. In such a case, subsection (C) prohibits the newly elected official from taking office until the vacancy "actually occurs." When Section 8-1-145(A) is read in conjunction with these provisions, a court likely would conclude that the General Assembly did not mean to rewrite the common law¹ regarding the resignation of public officers, but instead, it merely intended to provide a way for those elective officers who want to accept a new office to resign prospectively and thereby shorten the length of the vacancies that would otherwise occur.

While this Office has not previously opined on Section 8-1-145, we have issued opinions regarding when a resignation is effective since its passage. In an October 10, 2013 opinion, more than twenty years after Section 8-1-145 was enacted, this Office explained:

In order for a public officer's resignation to be legally effective, it must be tendered to and accepted by the person or entity authorized to receive it. See State v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908) (adopting doctrine that "the resignation of a public officer is not complete until it is either expressly or by implication accepted by the proper authorities"); Op. S.C. Att'y Gen., 1996 WL

¹ See Hoogenboom v. City of Beaufort, 315 S.C. 306, 318, 433 S.E.2d 875, 884, n.5 (Ct. App. 1992), adhered to on reh'g (Apr. 29, 1993).

The Legislature is presumed to enact legislation with reference to existing law, and there is a strong presumption that it does not intend by statute to change common law rules. See Columbia Real Estate & Trust Co. v. Royal Exchange Assurance, 132 S.C. 427, 128 S.E. 865 (1924). A statute is not to be construed as in derogation of common law rights if another interpretation is reasonable. See id. Statutes in derogation of common law are to be construed strictly to preserve vested rights. See Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968).

Mrs. Bonnie Knight
 Page 8
 June 04, 2019

549527 (Aug. 7, 1996) ("A written resignation is to be tendered to the entity or person authorized by law to receive it.... To be effective, the tendered resignation must be accepted by the appropriate entity or person."). Such a doctrine has been recognized by numerous other jurisdictions. Furthermore, the "[m]ere announcement of a public officer's intent to resign is insufficient to effectuate the resignation. Rather, the public officer must intend to resign, actually tender his resignation, and have the resignation accepted by the appropriate public body." 8 S.C. Jur. Public Officers and Public Employees § 45 (citing Op. S.C. Att'y Gen., 1986 WL 192036 (July 10, 1986) (county board member's announcement of intent to resign with no further action was ineffective; resignation must be tendered to and accepted by appropriate body, the county council, to be effective)).

Op. S.C. Att'y Gen., 2013 WL 5763372 (October 10, 2013). Because there has not been a change to the statute since this opinion was issued, it continues to be the opinion of this Office that a resignation submitted by a public officer is not effective until it has been accepted by the public body that is authorized to receive it. See Op. S.C. Att'y Gen., 2017 WL 5203263 (October 31, 2017) ("This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law.").

Conclusion

It is this Office's opinion that a court likely would hold a member of a school district board of trustees may revoke a tendered resignation before it is accepted. As is discussed more fully above, the legislative intent behind the adoption of Section 8-1-145 appears to address the limited situation where a public officer who holds an elective office intends to accept another office and, in such a case, to develop a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law. It continues to be the opinion of this Office that a resignation submitted by a public officer is not effective until it has been accepted by the public body that is authorized to receive it. Op. S.C. Att'y Gen., 2013 WL 5763372 (October 10, 2013).

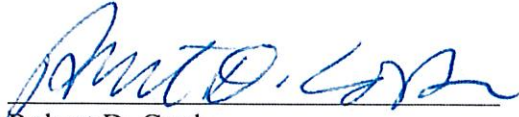
Sincerely,



Matthew Houck
 Assistant Attorney General

Mrs. Bonnie Knight
Page 9
June 04, 2019

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General



DAVID DRAISEN
Chairman, Area 7
MICHAEL S. UPTON
Vice Chairman, Area 2
DR. GARY L. BURGESS
Secretary, Area 1
JIM HANING
Area 3

JOHN MARTIN
Area 4
P. MICHAEL BROCK
Area 5
NAKIA DAVIS
Area 6
BRENDA D. BRADBERRY
Area 8
REV. DR. RUFUS H. MITCHELL
Area 9
STEPHEN J. NIMMER, JR.
Administrator

JENNIE O. ROPER
Executive Financial Administrative Assistant/BA
JULIE J. PELES, RDN
School Food Service Director
ALICIA CRAWFORD
Administrative Assistant
CYNTHIA E. PRUITT
Attendance/Dropout Prevention Coordinator
ANNA HALL
Attendance/Dropout Prevention Coordinator
SUSAN CROCHETIERE
Administrative Assistant

School Based Mental Health Counselors

NANCY M. ALLEN, LMSW
WENDY LANFEAR BROOKS, LMSW
IRENE GRIEBNO, LPC
MARY LEWIS, M.ED, LPC
JAN B. MARTIN, M.ED, LPC
RAMANDA MOORE, LMSW
KRISTA OVERBY, LMSW
RENEE' L. POTTER, LPC/S
KELLY L. RAY, M.ED, LPC

ANDERSON COUNTY BOARD OF EDUCATION

June 10, 2019

Anderson School District Two Board of Trustees
10990 Belton-Honea Path Highway
Honea Path, SC 29654

After reviewing all the information regarding the Attorney General's opinion as it relates to Act 8-1-145 and elements required of resignations, I have conferred with Mr. Nimmer and Mr. Michael Brock, who represents District Two on our Board.

The chair of Anderson Two Board of Trustees has not sent a letter to the Anderson County Board of Education announcing there is a vacancy approved by majority vote.

The opinion of the Attorney General of South Carolina is that there is no vacancy on the Anderson School District Two Board of Trustees.

Sincerely,

David Draisen, Chair
Anderson County Board of Education

DD/sc

cc: Members of the Anderson County Board of Education
Scott Price, South Carolina School Boards Association

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees

Plaintiff,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**AFFIDAVIT OF WILLIAM R. ("STU")
SHIRLEY**

PERSONALLY APPEARED before me, William R. ("Stu") Shirley, and after being first
duly sworn, deposes and says:

1. I am over 18 years of age and I have personal knowledge of the matters set forth
in this Affidavit.
2. I am a member of the Anderson County School District Two Board of Trustees.
3. I was elected to the Board in November 2018, to represent the citizens of what is
referred to as Area 1. My current term is 2018-2022.
4. I ran for the Anderson Two Board of Trustees because I care about our
community, the school district, and the education of the children in our community.
5. I am a graduate of Belton Honea Path High School and a life-long resident of the
Belton Honea Path area.
6. I have been married to my wife Shirley since 1981. My wife recently retired from
District Two. Our son, Clay Shirley, and his wife, Brittany Newman Shirley, both attended
District Two schools, Anderson University, and both now teach in District Two.

7. On the evening of May 13, 2019, the Anderson Two Board of Trustees held a regular Board meeting. On the agenda for that night's meeting was a discussion about the Superintendent's contract. The Board meeting was very contentious. We received legal advice by an attorney from the firm of White & Story, apparently representing the District, who advised us that any Board action against the Superintendent or his contract would result in legal action against Board members and that we would not be covered by the District's insurance policy.

8. Some members of the audience were quite angry during and after the meeting. Three of my fellow Board members, all female, had to be escorted to their cars by security officers. I was personally confronted by three angry men in the auditorium on my way out of the Board meeting and felt threatened. I also feared for my family being threatened.

9. Given what the attorney had said about being sued if we took action concerning the Superintendent and what I felt were threatening statements against me and maybe my family, I thought, at that moment, for the security and safety of myself and my family, it was best for me to resign my seat on the Board.

10. The next day, May 14, 2019, I emailed the Board Chair, Ms. Brenda Cooley, stating I was resigning from the Board. A copy of that email is attached to the Affidavit as Exhibit A. I also sent copies of my emailed resignation notice to all Board members, the Superintendent, and the local newspaper.

11. At the time I resigned, I was unaware of Board Policy BBBC, which requires a resignation to be provided 30 days prior to the effective date. A copy of Policy BBBC is attached as Exhibit B. Under Policy BBBC, I assume my attempted resignation may not even have been valid.

12. After a couple of days, when I calmed down, I began to realize my decision to

resign was too hasty. I also was contacted by members of the public who asked me to stay on the Board. After much thought and prayer, I decided I should withdraw my resignation.

13. On Friday, May 17, 2019, I sent a letter to the Board Chair, Ms. Brenda Cooley, withdrawing my resignation. A copy of my May 17 letter is attached as Exhibit C.

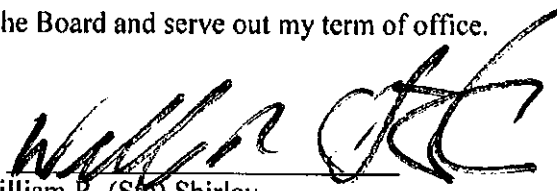
14. On the same day, Ms. Cooley acknowledged receipt of my letter and let me know that she would notify all Board members and the Anderson County Board of Education of my withdrawing my resignation. A copy of Ms. Cooley's May 17 letter is attached as Exhibit D

15. I attended the Special Board meeting on Wednesday, May 22, 2019. The three Board members, who are the plaintiffs in this suit, stated that that my May 14 resignation resulted in an immediate vacancy on the Board, and that my withdrawing the resignation was not valid.

16. The S.C. Attorney General's office has since issued an opinion that I was entitled to withdraw my resignation prior to it being accepted by the Board, which has never happened.

17. As the Attorney General has said, I was entitled to withdraw my resignation because I did so before it was accepted. I believe I am at this time an elected and functioning member of the Anderson Two Board of Trustees. I have attended all Anderson Two Board meetings since May 13, and my intention is to stay on the Board and serve out my term of office.

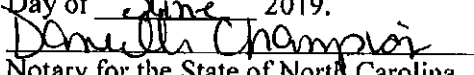
FURTHER AFFIANT SAITH NOT.

Signature: 

Name: William R. (Stu) Shirley

Title: _____

SWORN to before me this 24th
Day of June 2019.


Notary for the State of North Carolina

My Commission Expires: April 15, 2023

DANIELLE CHAMPION Notary Public Brunswick Co., North Carolina My Commission Expires April 15, 2023
--

From: William "Stu" Shirley <wshirley@asd2.org>

Date: Tuesday, May 14, 2019

Subject: Resignation

To: Brenda Cooley <bcooley@asd2.org>, Jimmy Ouzts <jouzs@asd2.org>, Julia Barnes <jbarnes@asd2.org>, Bonnie Knight <bknight@asd2.org>, Kevin Craft <kcrafft@asd2.org>, Phil Ashley <pashley@asd2.org>, Richard Rosenberger <rrosenberger@asd2.org>, Elaine Rider <elaine@bhpn.com>, Susan Shirley <sashirley@asd2.org>, Lester McCall <lmccall@asd2.org>

Since I managed to quit Football several times in high school, (I didn't like to Practice) I have always tried to make it a rule to finish what I start. Unfortunately after the events of last evening and the last two weeks, it is apparent that I must be the problem and not part of the solution.

The thing that got me the most was two young ladies and a child in the parking lot. They spoke to me and said they supported me but were hurrying to their car. The child was asking what was happening and the lady said shush let's get to the car.

Therefore, effective immediately, I resign. I won't attend another Board meeting nor answer another email on the School email account. I won't be involved in school board business period. Mrs. Susan Shirley, you may at your earliest possible convenience do whatever you normally do to a school email that is no longer required. Mrs. Elaine Rider, you may publish the resignation letter at your convenience.

I Do wish you all the good fortune you can have and will continue to Pray for our Teachers, Staff and Students in District #2.

Stu Shirley

EXHIBIT A

Policy BBBC Board Member Resignation

Issued 6/13

Purpose: To establish the basic structure for board member resignation.

If a board member's permanent residence ceases to be in his/her area of the school district as outlined in law, a vacancy is created and such change of permanent residence outside the voting district will be treated as a resignation.

Whenever a board member finds it impossible to complete his/her term of office, he/she will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board at least 30 days prior to the effective date of said resignation.

Adopted 7/9/90; Revised 3/10/03, 6/10/13

Legal references:

S.C. Acts and Joint Resolutions:

1982 Act 509 - An Act to provide for boards of trustees of the school districts of Anderson County.

1983 Act 227 - Amends Act 509 of 1982 to provide that vacancies may be filled only until a successor is elected.

Anderson School District Two

EXHIBIT B

May 17, 2019

Ms. Brenda Cooley, Board Chair for Anderson County District #2

Ms. Cooley,

After a long week and much prayer and thought, I have reconsidered resigning my position. I have been contacted by caring people this week who asked me to remain on the board in the position they voted me to represent them on the Board for Anderson County School District #2.

Will you please relay this decision to the Anderson County Board and advise their position.

Thank you,

William R. (Stu) Shirley

A handwritten signature in black ink, appearing to be 'Stu Shirley', written over the printed name.

EXHIBIT C

DR. RICHARD ROSENBERGER
SUPERINTENDENT

TELEPHONE
(864) 389-7364

ANDERSON COUNTY SCHOOL DISTRICT NO. TWO
BELTON-HONEA PATH SCHOOLS
10990 BELTON-HONEA PATH HIGHWAY
HONEA PATH, SOUTH CAROLINA 29854

May 17, 2019

Dear Mr. Shirley,

I wish to acknowledge receipt of your letter dated May 17, 2019 withdrawing your resignation from the Board of Trustees of Anderson County School District Two submitted on Tuesday, May 14, 2019. On behalf of the Board of Trustees of Anderson County School District Two, I accept the withdrawal of your resignation and am notifying our board members and the Anderson County Board of Education of this development.

Thank you,



Brenda Cooley
Board Chair
Anderson District Two.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees

Plaintiffs,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No. 2019-CP-04-01118

**ANSWER AND
COUNTERCLAIM**

**TO: KURT TAVERNIER, ESQ AND BRUCE BYRHOLT, ESQ., ATTORNEYS FOR
THE PLAINTIFFS**

The Defendant Anderson County School District Two Board of Trustees (hereinafter, “Defendant” or “the District Two Board”), by and through their undersigned counsel, hereby submits its Answer and Affirmative Defenses, in response to the numbered paragraphs thereof. The District also asserts its Counterclaim against the Plaintiffs, seeking a declaratory judgment that William R. (“Stu”) Shirley’s resignation was never properly submitted and, in any event, was rescinded or withdrawn prior to the Board accepting the resignation, such that no vacancy occurred and Shirley continues to be a lawful member of the District Two Board.

GENERAL ALLEGATIONS

1. Admitted.
2. Admitted.

3. Denied as stated. Defendant admits only that its members represent the citizens of Anderson District Two on matters related to public education. The remainder of the allegations are denied.

4. Admitted.

5. Defendant generally admits the allegations in paragraph 5, but craves reference to the document referenced, which speaks for itself. The District denies any and all allegations inconsistent with the same.

6. Denied as stated. Defendant agrees that Shirley is one of two trustees elected from Area 1 of the District. Defendant states that at all times relevant to this suit, Mr. Shirley was a member of the District Two Board. Defendant further states that Mr. Shirley is still a member of the District Two Board.

7. Denied.

8. Denied.

9. Denied as stated. Defendant admits that on Friday, May 17, 2019, three days after he submitted an email resignation, Shirley wrote a letter to Defendant's Board Chair stating he wished to rescind his resignation and requesting that his decision be forwarded on to the other Board members and the Anderson County Board of Education. That same day, Defendant's Board Chair acknowledged receipt of Shirley's letter, forwarded it to all Board members, and accepted his resignation rescission on behalf of the Board. The remainder of the allegations are denied.

10. Denied as stated. Defendants agree only that approximately three days passed between the time when Shirley emailed his resignation to the Board and others and when he emailed the Board Chair rescinding his resignation. The remaining allegations are denied.

11. Denied. Defendant further states these allegations are not proper in this declaratory judgment action.

12. Denied as stated. Defendant Board sought an opinion of the South Carolina Attorney General regarding whether there was a vacancy on the Board as a result of Mr. Shirley's resignation and whether Mr. Shirley's rescission of his resignation was effective such that he remained a member of the Board. Defendant Board denies that its request for a legal opinion from the Attorney General did not fully incorporate or address all pertinent facts and policies. The remaining allegations are denied.

13. This paragraph sets forth legal conclusions and questions of law to which no response is required. To the extent a response is required, the allegations in paragraph 13 are denied.

14. Admitted.

FOR A FIRST CAUSE OF ACTION
(TERMPORARY RESTRAINING ORDER)

15. Defendant incorporates all responses above.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

FOR A SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT)

20. Defendant incorporates all responses above.

21. Denied.

Plaintiffs' "WHEREFORE" statement constitutes a demand for relief to which no response is required. To the extent that a response is required, the District denies that the Plaintiff is entitled to the relief sought in the Complaint

THE DEFENDANTS'S DEFENSES

Without admitting any allegations asserted in the Complaint, Defendant interposes the following defenses. Nothing stated in any of the defenses constitutes a concession that Defendant bears any burden of proof on any issue on which it would not otherwise bear such burden.

FOR A FIRST AFFIRMATIVE DEFENSE

One or more of the Complaint's causes of action fail to state facts sufficient to constitute a cause of action.

FOR A SECOND AFFIRMATIVE DEFENSE

Any purported claim asserting civil conspiracy and/or negligence is improper in this equitable/declaratory judgment action.

FOR A THIRD AFFIRMATIVE DEFENSE

Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and it reserves its right to amend its Answer to assert any such defenses.

DEFENDANT BOARD'S COUNTERCLAIM **(FOR DECLARATORY JUDGMENT)**

C1. The three Plaintiffs/Counterclaim Defendants are duly elected trustees of the Anderson County School District Two School Board.

C2. Defendant/Counterclaimant is the School Board on which the Plaintiffs/Counterclaim Defendants serve.

C3. The Anderson County Board of Education (hereinafter, “the County Board”) has general supervision of all phases of the public school program in Anderson County except as may be otherwise vested in boards of trustees of local school districts.

C4. District Two Board Member William “Stu” Shirley was elected to serve a four-year term on the Anderson District Two Board of Trustees in November 2018. This is his first term as a member of the District Two Board and his term runs from 2018-2022.

C5. On Monday, May 13, 2019, the Board held its monthly meeting. The Board meeting was very contentious, and a large audience was in attendance.

C6. While trying to leave the meeting, Mr. Shirley was confronted by several angry men. He felt threatened by these men. His family felt threatened as well.

C7. The next day, Tuesday, May 14, 2019, Mr. Shirley emailed other members of the Board stating that he had decided to resign from the board, effective immediately.

C8. District Two Board Policy, BBBC, provides that a board member who intends to resign “will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board at least 30 days prior to the effective date of said resignation.”

C9. Based on Policy BBBC, Mr. Shirley’s email stating he wished to resign effective immediately, was not a valid resignation.

C10. There were no Board meetings scheduled between Tuesday May 14, 2019 and Friday, May 17, 2019. No Board member requested a special called meeting to address the attempted resignation during that time.

C11. On Friday, May 17, 2019, Shirley submitted a letter to Brenda Cooley, Chairperson for the Board, stating as follows:

Ms. Cooley,

After a long week and much prayer and thought, I have reconsidered resigning my position. I have been contacted by caring people this week who asked me to remain on the board in the position they voted me to represent them on the Board for Anderson County School District #2.

Will you please relay this decision to the Anderson County Board and advise their position?

C12. That same day, Ms. Cooley responded, stating:

Dear Mr. Shirley,

I wish to acknowledge receipt of your letter dated May 17, 2019 withdrawing your resignation from the Board of Trustees of Anderson County School District Two Submitted on Tuesday, May 14, 2019. On behalf of the Board of Trustees of Anderson County School District Two. I accept the withdrawal of your resignation and am notifying our board members and the Anderson County Board of Education of this development.

Thank you,

(Signed)

Brenda Cooley

Board Chair

Anderson District Two.

C13. At a special called meeting on May 22, 2019, Plaintiff/Counterclaim Defendant Ashley, asserted that it was illegal for Mr. Shirley to be sitting on the Board following his resignation. He made a motion that Mr. Shirley be removed. The vote failed on a three-to-three tie vote. Mr. Shirley abstained.

C14. Acting Board Chairperson Bonnie Knight¹ sought a formal opinion from the South Carolina Attorney General. In her May 24, 2019 letter to the Attorney General's office, Ms. Knight set out the factual background as detailed above and asked whether a vacancy existed on the Board

¹ By this time, Board Chair Brenda Cooley was recuperating from medical issues and Ms. Knight, as vice chair, assumed the position of Acting Board Chair.

and whether Mr. Shirley's rescission of his resignation was effective such that he remained a member of the Board.

C15. In an opinion letter dated June 4, 2019, the Attorney General concluded that a member of a school district board of trustees may revoke a tendered resignation before it is accepted by the Board.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

C16. Each and every allegation previously alleged is realleged as if fully set forth herein.

C17. The District Two Board is informed and believes it is necessary for the proper and efficient working of the Board that it bring this action, on behalf of the entire Board, the Anderson County School District Two, its stakeholders and residents, for a declaratory judgment, in consideration of all applicable law and District Two Board policies, holding: 1) that there is no vacancy on the Board; 2) Board Member Shirley's resignation was invalid; or, in the alternative, that the rescission of his resignation is valid; and 3) Board Member Shirley is a legitimate and lawful Trustee of the District Two Board of Trustees.

WHEREFORE, the Plaintiff's pray for the following relief:

A declaratory judgement declaring that: 1) that there is no vacancy on the Board; 2) Board Member Shirley's resignation was invalid; or, in the alternative, that the rescission of his resignation is valid; and 3) Board Member Shirley is a legitimate and lawful Trustee of the District Two Board of Trustees; and

For such and further relief as the Court may deem proper.

Respectfully submitted,

DUFF & CHILDS, LLC

By: s/David N. Lyon

David N. Lyon (S.C. Bar #100676)

Kenneth L. Childs (S.C. Bar #1217)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

Email: dlyon@duffchilds.com

Email: kchilds@duffchilds.com

Attorneys for Defendant Anderson County School
District Two Board of Trustees

June 28, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees,

Plaintiffs,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**DEFENDANT’S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

This matter arises out of a dispute between the Plaintiffs/Counterclaim Defendants, three members of the seven-member Anderson County School District Two Board of Trustees, (“Ashley *et. al.*”) and the Defendant/Counterclaim Plaintiff Board of Trustees (the “Board”). The dispute is over whether a vacancy was created when Board member William R. (“Stu”) Shirley sent an email to the Board on May 14, 2019, indicating his intention to resign from the Board. Shirley submitted a letter withdrawing his resignation three days later on May 17, before there was ever any effort by the Board to accept his resignation. In an opinion dated June 4, 2019, the Attorney General opined that a court would likely conclude a school board member may revoke a tendered resignation before it is accepted by the Board, reiterating the AG’s long-standing understanding of the common law in South Carolina that a public officer’s resignation is not effective until it has been accepted by the public body obligated to receive it.

On June 14, 2019, Ashley *et. al.* filed a Declaratory Judgment action asking this Court to effectively disregard the AG’s opinion and declare Shirley’s May 14 resignation email

irrevocable. Plaintiffs also asked the Court, in its suit and in a contemporaneously filed motion, to issue a temporary stay of all matters before the Defendant Board until such time as the Court ruled in the Declaratory Judgment action.

On June 27, 2019, the Honorable J. Cordell Maddox, Jr., held a hearing on the Motion for Temporary Stay. By written Order dated July 1, 2019, Judge Maddox took the matter under advisement, but allowing Mr. Shirley to participate as a lawful Board member in any business before the Board with the exception that he not vote on any decision regarding District-level hiring or firing decisions.

On June 28, 2019, the Board submitted its Answer to Plaintiffs' suit and counterclaimed with its own Declaratory Judgment action seeking a judgment declaring: 1) that there is no vacancy on the Board; 2) that Board member Shirley's resignation was ineffective; or, in the alternative, that the rescission of his resignation is valid; and 3) that Board member Shirley is a legitimate and lawful Trustee of the District Two Board of Trustees.

On July 18, 2019, the Board submitted its Motion for Summary Judgment as to both declaratory judgment actions and filed this Memorandum contemporaneously therewith.

FACTS

On Monday, May 13, 2019, the Board held its monthly meeting. On the agenda were matters related to the Superintendent's contract. (Shirley Aff. ¶ 7). The Board meeting proved very contentious, and there was a large audience in attendance. (Shirley Aff. ¶ 7).

The Board received legal advice from an attorney from the law firm of White & Story, apparently representing the District,¹ who advised that any Board action negatively affecting the

¹ There is no evidence that the Board ever voted to hire the attorney or her firm, White & Story, as is contemplated by Board Policy BDG. Further, it is unclear who called the attorney to attend the meeting and advise the Board on this occasion. Per policy BDG, the Board should make

Superintendent's contract would likely result in legal action against the Board members individually and that the suit would not be covered by the District's insurance policy. (Shirley Aff. ¶ 7).²

While trying to leave the meeting, Shirley was confronted by several angry men. (Shirley Aff. ¶ 7). Shirley testified he felt threatened by these men and that there may be a threat to his family as well. (Shirley Aff. ¶ 7). The female members of the Board had to be escorted to their cars by security officers. (Shirley Aff. ¶ 8). Given the threats of litigation against board members individually and potential threats to the safety of himself and his family, Shirley decided that he should resign from the Board for his and his family's safety and well-being. (Shirley Aff. ¶ 9).

The next day, Tuesday, May 14, 2019, Mr. Shirley emailed other members of the Board stating that he had decided to resign from the Board, effective immediately. (Shirley Aff. ¶ 10,

communications to the District's attorney through the Superintendent or the Board Chair. In this case, the Board Chair did not request the presence of the attorney, nor was the Board Chair even informed that the attorney would be present.

² In the experience of the undersigned, any litigation resulting from a decision made by Board members regarding the Superintendent's contract, would, at least initially, be covered by the District's insurance. It likely would be assumed, (again, at least initially), that any vote by a Board member regarding the Superintendent's contract would be within the scope and authority of the School Board, and therefore, unlikely to support any tort claims against individual Board members. *Fleteau v. Harrelson*, 355 S.C. 197, 206, 584 S.E.2d 413, 417 (Ct. App. 2003) (finding that there can be no liability for individual board members under the Tort Claims Act where the board members' conduct was within the scope of their official duties). Admittedly, nothing would stop a plaintiff's attorney from framing allegations in such a way as to suggest that the board members acted *ultra vires*, but it seems highly likely that District's insurance would defend such a claim, even if under a reservation of rights letter. It seems that Mr. Shirley, who is in his first year as a School Board member and who has no legal training did not fully understand his potential exposure and assumed he would be responsible for paying for his defense and any potential damages award.

Exhibit A). Three days later, on Friday, May 17, 2019, before the Board took any action regarding his resignation, Shirley revoked his resignation. (Shirley Aff. ¶ 13). He submitted a letter to Brenda Cooley, Chairperson for the Board, stating:

Ms. Cooley,

After a long week and much prayer and thought, I have reconsidered resigning my position. I have been contacted by caring people this week who asked me to remain on the board in the position they voted me to represent them on the Board for Anderson County School District #2.

Will you please relay this decision to the Anderson County Board and advise their position?

(Shirley Aff. ¶ 13, Exhibit C). Ms. Cooley responded that day, acknowledging receipt of his resignation withdrawal, accepting it on behalf of the Board, and promising to notify the other Board members. (Shirley Aff. ¶ 14).

At a special called meeting on May 22, 2019, Plaintiff/Counterclaim Defendant Ashley, asserted that it was illegal for Shirley to be sitting on the Board following his resignation. (Knight Aff. ¶ 9). In support of his position, he cited an email from an attorney with White & Story to Mr. Joey Nimmer, the Executive Director of the Anderson County Board of Education. The attorney's email stated the opinion that Mr. Shirley's resignation was irrevocable and that as a result, a vacancy existed on the Board. (Attachment 1). Mr. Ashley made a motion that Mr. Shirley be removed. The vote failed on a three-to-three tie vote, with Shirley abstaining. (Attachment 2 – School Board Meeting Minutes).

Believing the White & Story opinion was conclusory, counterintuitive, and likely wrong, Acting Board Chairperson Bonnie Knight³ sought a formal opinion from the South Carolina Attorney General. (Knight Aff. ¶ 11). In her May 24, 2019 letter to the Attorney General's

³ By this time, Board Chair Brenda Cooley was recuperating from medical issues and Ms. Knight, as Vice Chair, assumed the position of Acting Board Chair.

office, and a subsequent letter dated May 25, 2019, providing more of the factual background, as detailed above, Knight asked whether Mr. Shirley's rescission of his resignation was effective such that he remained a member of the Board.

In an opinion letter dated June 4, 2019, the Attorney General concluded that a member of a school district board of trustees may revoke a tendered resignation before it is accepted by the Board. (Knight Aff. ¶ 12, Exhibit A).

On June 10, 2019, the Anderson County Board of Education sent a letter to the Anderson Two Board of Trustees concluding that, based on the AG opinion, no vacancy existed on the Anderson Two Board. (Knight Aff. ¶ 13, Exhibit B).⁴

Thereafter, Ashley *et. al.* filed their Declaratory Judgment action and their Motion for Temporary Stay challenging the opinion of the Attorney General and the position of the County Board.

LEGAL ANALYSIS

The Attorney General's June 4, 2019 opinion is comprehensive, and its conclusion that a Board member may revoke a tendered resignation before it is accepted by the Board is correct. The AG's nine-page opinion is based upon legal precedent, particularly the decision in *State v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908), prior AG Opinions, and an analysis of the relevance of S.C. Code Section 8-1-145 to this situation. The Attorney General concluded that Section 8-1-145 was not applicable to this situation and did not operate to override South Carolina common law that "a resignation submitted by a public officer is not effective until it has been accepted by

⁴ At its June 17, 2019 meeting the Anderson County Board of Education received a legal opinion from their legal counsel, Richard Thompson, Esq. of the Thompson and King Law Firm. The minutes from that meeting (Attachment 3) show that Mr. Thompson's legal opinion mirrors the Attorney General's opinion concluding, as did the attorney general, that Shirley's attempted resignation was never accepted and therefore no vacancy was created.

the public body that is authorized to receive it.” (Knight Aff. ¶ 12, Exhibit A) (emphasis added). Further, the Board believes that the Attorney General had all of the relevant facts necessary for it to issue an opinion that governs this case.

“Although attorney general opinions are not precedential, they are afforded great weight in South Carolina, particularly in matters of statutory construction.” *Mun. Ass’n of S.C. v. Omaha Prop. & Cas. Ins. Co.*, No. CIV.A. 3:06-467-MJP, 2007 WL 7945179, at *6 (D.S.C. Apr. 9, 2007). While a court is not bound by Attorney General opinions, such opinions “should not be disregarded without cogent reason.” *Price v. Watt*, 280 S.C. 510, 513, n. 1, 313 S.E.2d 58, 60 n. 1 (Ct. App. 1984). As the resolution of this matter depends, largely, on statutory construction, the AG’s opinion should be given great weight. To the extent not incorporated here, the Board adopts the legal analysis and conclusion of the Attorney General’s opinion.

A. Shirley’s resignation was not effective because it did not comply with Board Policy.

Initially, Mr. Shirley’s attempted resignation was not in accord with Board policy and, therefore, was not valid to begin with. District Two Board Policy BBBC, provides that a Board member who intends to resign “... will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board at least 30 days prior to the effective date of said resignation.” (Shirley Aff. ¶ 11, Exhibit B). Thus, Mr. Shirley’s email (technically not a signed letter) stating he wished to resign effective immediately did not comply with the Board’s own operating procedure and was therefore not an effective resignation.

B. Under common law in South Carolina, Mr. Shirley’s resignation was not effective because it was not accepted by the Board and he was entitled to withdraw it.

The clear weight of authority in South Carolina is that the resignation of a public official must be accepted by the appropriate public body to be effective. According to South Carolina

Jurisprudence, “[m]ere announcement of a public officer's intent to resign is insufficient to effectuate the resignation. Rather, the public officer must intend to resign, actually tender his resignation, and have the resignation accepted by the appropriate public body.” *S.C. Jur. Public Officers and Public Employees* § 45 (emphasis added). Where the law requires that a resignation be acted upon, the resignation clearly can be withdrawn before it is acted upon. *See 3 McQuillin Mun. Corp. § 12:173.4, Resignation of officer* (3d ed.) (Attachment 4).

As noted by the AG’s office, the S.C. Supreme Court in *State v. Stickley*, “adopted the common law principle that a resignation may be withdrawn at any time until the proper authority receives and accepts it.” 61 S.E. at 213. Under a factual scenario not unlike the one presented in this case, the Supreme Court held:

the resignation of Stickley as intendant was made to the proper authority to receive it, the wardens of the town, and if it had been promptly accepted by them, it could not have been recalled; but there was no attempted acceptance until nearly a month thereafter. In the meantime, certainly on the night of the third day after his resignation was tendered, at the request of a majority of the qualified voters of the town in mass meeting, and in the presence of [the] clerk and treasurer, he withdrew his resignation as intendant . . . Stickley having withdrawn his resignation before its acceptance by the wardens of which they had notice, under the principle heretofore announced he holds his position as intendant as against any election held after such withdrawal.

Stickley, id., at 213. Like *Stickley*, Shirley submitted his resignation to the Board and three days later, prior to the Board taking any action, he withdrew it. *Stickley* is, therefore, both legally and factually on point.

Stickley remains good law. *See e.g., Rogers v. Coleman*, 245 S.C. 32, 34, 138 S.E.2d 415, 417 (1964) (assuming that resignations must be accepted by the public body to be effective). As noted in the AG opinion (Knight Aff. ¶ 12, Exhibit A, p. 4), the AG’s office has repeatedly relied upon *Stickley* in decisions regarding the effectiveness of resignations of public officials and revocations of resignations. *See* 1986 S.C. Op. Att’y Gen. 245 (July 10, 1986);

2015 WL 992703, at *2 (S.C.A.G. Feb. 20, 2015); 2013 WL 5763372, at *2 (S.C.A.G. Oct. 10, 2013); 1996 WL 549527, at *2 (S.C.A.G. Aug. 7, 1996).

Mr. Shirley's resignation was not acted upon by the Board. No Board meeting was even called to address the attempted resignation wherein the Board might have accepted the resignation. There was never even any attempt by the Board to hold a meeting to act upon the resignation. Since Shirley's attempted resignation was not acted upon prior to its withdrawal, it had no effect. The written and signed withdrawal of his attempted resignation was effective and rendered moot any issue regarding his status as a lawful Board member. Accordingly, no vacancy was ever created, and Mr. Shirley's status as an elected Board member was never changed.

C. Section 8-1-145 is not applicable to Mr. Shirley's resignation and does not Operate to make his initial intent to resign irrevocable.

The belief that Mr. Shirley's May 14 resignation letter was "irrevocable" such that a vacancy was immediately created depends upon an incorrect application and analysis of S.C. Code Section 8-1-145(A), which states: "A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date."

The Attorney General's opinion explores the legislative history of this statute and its subsequent revision, supplemented by news reports from *The State* newspaper, which includes quotes by legislators explaining the intent of the law. In sum, the legislative history demonstrates that this statute was intended to create a process whereby an elected official could submit an irrevocable resignation in order to assume another appointive or elective position, while also providing a date certain regarding when the vacancy was deemed to have occurred.

That is not the situation in this case -- Shirley was not submitting a resignation so that he could assume another public office.

The AG's office engaged in statutory construction, interpreting the statute's use of the word "may" as permissive rather than mandatory, and reading the law in conjunction with all of its subparts, which clearly establishes that the statute is intended to address the limited circumstances of a public official resigning prospectively in order to assume another public office. The AG opinion concludes that Section 8-1-145 is not applicable to this case, stating:

[T]he procedures for calling a special election in Section 8-1-145 are not intended to address every resignation of a public official in all instances. Rather, the legislative intent behind the adoption of Section 8-1-145 appears to address the limited situation where a public officer who holds elective office intends to accept another office, and in such a case to develop a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law. . . A court would likely conclude that the General Assembly did not mean to rewrite common law regarding the resignation of public officers, but instead, it merely intended to provide a way for those elective officers who want to accept a new office to resign prospectively and thereby shorten the length of the vacancies that would otherwise occur.

(p. 7). The AG's statutory construction analysis is clearly correct and should be accorded great deference. Since Section 8-1-145 does not change the common law rule in this case, the Court should conclude that Mr. Shirley's resignation was not irrevocable and was never accepted by the Board, as it was withdrawn before the Board even attempted to take action on it.

CONCLUSION

The Board's Motion for Summary Judgment should be granted and Ashley *et al.*'s request for a declaratory judgment in its favor should be denied. Accordingly, the Board respectfully requests that the Court issue an order declaring that: 1) that there is no vacancy on the Board; 2) that Board member Shirley's resignation was ineffective, or, in the alternative, that

the rescission of his resignation is valid; and 3) that Board member Shirley is a legitimate and lawful Trustee of the District Two Board of Trustees.

Respectfully submitted,

DUFF & CHILDS, LLC

By: s/David N. Lyon

David N. Lyon (S.C. Bar #100676)

Kenneth L. Childs (S.C. Bar #1217)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

Email: dlyon@duffchilds.com

Email: kchilds@duffchilds.com

Attorneys for Defendant Anderson County School
District Two Board of Trustees

July 18, 2019
Columbia, South Carolina

ATTACHMENT “1”

Joey Nimmer

From: Lonnese Williams <lwilliams@sodacitylaw.com>
Sent: Wednesday, May 22, 2019 4:24 PM
To: Joey Nimmer
Cc: Ashley Story
Subject: Vacancy Matter

Dear Mr. Nimmer,

As we discussed today, you requested for an opinion regarding whether there is a vacancy concerning Anderson School District Two's Board of Trustees. Specifically, you asked whether a vacancy exists after a board member provided written notification of his immediate resignation and then subsequently provided a letter rescinding his resignation, which was accepted by one board member.

The facts were presented to me as follows: the board member submitted his written resignation to all board members via email, stated that it was "effective immediately," and further wrote that he would not "attend another meeting or [answer] emails." This resignation was dated May 14, 2019. Three days later, on May 17, 2019, the board member provided a letter rescinding his resignation. This letter of rescission was given to one board member and was "accepted" on behalf of the board.

Specifically, Board Policies BBAA, BBBC, and BBBE assist with answering your question. Board Policy BBBC provides the manner in which a board member should provide notice of his/her resignation to the board; however, this policy is silent with regard to the rescission of a written resignation. Despite its silence on the rescission issue, Board Policy BBAA – Board Member Authority and Responsibilities – directly references S.C. Code Title 8. S.C. Code 8-1-145, which applies to elected officials such as school board members, is a state statute providing that "[a] person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date." Board Policy BBBE provides that "[i]n the case of a vacancy on the board, such vacancy will be filled by appointment by the Anderson County Board of Education. . . ." (citing 1982 Act 509 and 1983 Act 227, which both mirror Board Policy BBBE and S.C. Code 59-16-60 concerning Anderson County Board of Education's authority to appoint a successor upon a vacancy on the district level board of trustees).

Relying on SC Code 8-1-145 and the plain language of the board member's May 14th resignation notice, it is fair to conclude that the resignation was effective as of May 14, 2019, and was irrevocable.* It then follows that there is a vacancy on Anderson School District Two's Board of Trustees, which must be filled by the Anderson County Board of Education.

Referenced above, Anderson School District Two's Board Policy BBAA provides that ". . . all powers of the board of trustees lie in its action as a group, individual board members exercise their authority over district affairs only as they vote to take action at a legal meeting of the board" and "the board will not be bound in any way by any action or statement on the part of any individual board member not delegated by the board." With that in mind, I am of the opinion that one board member does not have the authority to accept the resignation revocation.

A vacancy likely exists given the above facts an application of state law, which would supersede Board Policy. If you have additional questions, please let me know.

Thank you.
 Lonnese

*There is a South Carolina case, which was decided in 1908, that speaks to a public official's ability to rescind a resignation. Since, S.C. Code 8-1-145 was enacted in 1990, we believe that this analysis is controlled by S.C. Code 8-1-145.



Lonniesse P. Williams
Associate Attorney
White & Story, LLC
3614 Landmark Drive, Suite EF
P.O. Box 7036 (29202)
Columbia, SC 29204
T: 803.814.0993
Direct Line: 803.626.1781
F: 803.814.1183
lwilliams@sodacitylaw.com

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately and delete all copies of the material.

ATTACHMENT “2”

ANDERSON COUNTY SCHOOL DISTRICT TWO
Board of Trustees Meeting Minutes
(Special Called)
 May 22, 2019
 6:00 p.m.

A special called meeting of the Board of Trustees was held on Wednesday, May 22, 2019 at 6:00 p.m. in the Administrative Office. The purpose of the meeting was discussion of employment of special legal counsel. All Board members were present. On hand for the meeting were WYFF News 4 along with Fox Carolina News. Also in attendance for the meeting were Mr. Joey Nimmer and Mr. David Draisen of the Anderson County Board of Education. Others attending the meeting were Sam Gilmer and Mrs. Elaine Rider of the *News Chronicle*. There was a large number of school administrators, teachers, students and community members in attendance. Several resource officers were present.

The acting Board Chair, Mrs. Knight called the meeting to order. Mrs. Knight shared that she would continue to represent the Board as acting chair until Mrs. Cooley has been released from her doctor due to health concerns.

Belton-Honea Path High School student, Sam Gilmer led the pledge of allegiance.

Upon an attempt to adopt the agenda, a point of order was raised by Mr. Ashley – “It is illegal for Mr. Stu Shirley to be sitting on the Board after giving his resignation following the May 13, 2019 Board Meeting. It is a violation of state law. An elected official’s resignation is “irrevocable” and “immediate.” Mr. Ashley asked Mr. David Draisen, Chairman of the Anderson County Board of Education to comment on the resignation as assumed by the County Board.

The meeting proceeded with several individuals speaking out/alluding to policies and laws regarding the rescinding of a board member’s resignation.

Mr. Ashley made a motion that Mr. Shirley be removed from his seat on the Board. Mr. Craft seconded the motion which was followed by more discussion. Mrs. Knight made a call to vote on the motion which failed on a 3-3 tie.

Dr. Barnes made a motion that the meeting be adjourned. Mr. Craft seconded the motion.

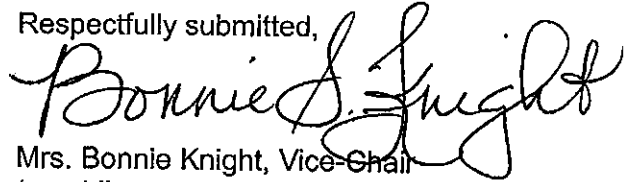
No ruling was made regarding the rescinding of Mr. Shirley’s resignation. Mr. Draisen spoke again regarding proper procedures followed by Mr. Craft sharing his response from the South Carolina School Boards Association’s attorney regarding the matter.

Mrs. Knight responded that “we will get a ruling as soon as possible and meet back here for further discussion.”

The meeting continued with back and forth discussion and comments between the Board and individuals of the audience.

The meeting ended with no agenda items being discussed.

Respectfully submitted,

A handwritten signature in black ink, reading "Bonnie S. Knight". The signature is written in a cursive style with a large, prominent "B" and "K".

Mrs. Bonnie Knight, Vice-Chair
(presiding as Acting Chair)

Mr. Jimmy Ouzts, Secretary

Dated: May 22, 2019

ATTACHMENT “3”

Anderson County Board of Education

907 North Main Street, Suite 202, Anderson, South Carolina 29621
June 17, 2019

Call to Order: Mr. David Draisen called the meeting to order and Rev. Dr. Rufus Mitchell presented the invocation. Everyone joined in the pledge of allegiance to the American Flag.

Board Members Present: Mr. David Draisen, Ms. Brenda Bradberry, Mr. Mike Brock, Dr. Gary Burgess, Mr. Nakia Davis, Mr. Jim Hening, Rev. Dr. Rufus Mitchell, Mr. Mike Upton and Mr. Joey Nimmer, Ex Officio.

Board Members Absent: Mr. John Martin was unable to attend.

Approval of Agenda: Ms. Brenda Bradberry made the motion to approve the agenda. Mr. Mike Upton seconded the motion and the Board members agreed unanimously.

Approval of Minutes: Ms. Brenda Bradberry made the motion to approve the minutes of the May 20, 2019 Board meeting and the minutes of the Called Meeting held on June 4, 2019. Rev. Dr. Rufus Mitchell seconded the motion and the Board approved the minutes unanimously.

Recognition of Media and Patrons/Public Comment Period: No one from the media or public was present for public comment.

Consideration of Bond Issue for Anderson School District One: Mr. Travis Thomas, Director of Finance for School District One, presented the building plan that will replace Palmetto Middle School and Wren Middle School to the Board Members at last week's budget meeting. Both of these school buildings are over 60 years old. The District also plans to upgrade safety and security concerns, replace aging HVAC systems, repair roofing issues district wide, and add additional wings of classrooms due to overcrowding.

In April, voters in District One approved the referendum and the School Board approved the resolution at their May 14th meeting authoring the issuance of general obligation bonds not to exceed \$109,000,000.00. Then at the May 28th meeting, the 2019-20 general fund budget was approved at \$80,372,940.00. There will be no millage increase.

At this time Mr. Thomas requested that the Anderson County Board of Education consider approving the resolution authorizing the issuance and sale of \$109,000,000.00 of general obligation bonds to finance the cost of projects approved by the referendum held in School District One on April 3, 2019.

Dr. Gary Burgess made a motion to approve the issuance of the bonds for District One not to exceed \$109,000,000.00. Mr. Mike Upton seconded the motion and the board approved the motion unanimously.

Consideration of Request from Anderson School District Five to Liquidate Surplus

Assets: Mr. Nimmer referenced the letter of request in their packets from School District Five and then introduced Mr. Ben Willis who is the Director of Information Technology Services for the district. Mr. Willis explained that District Five will auction surplus items off, as they always have, but are requesting a blanket approval for a six month period in order to save time and increase expediency as they have very limited space after the closing of the Career Center. This was approved by the District Five Board at their last meeting and Mr. Willis assured the Board Members that the district will continue to provide the County Board with a list of items sold with the amount earned.

Ms. Brenda Bradberry made a motion to approve District Five's blanket request to auction surplus items as needed through December 31, 2019. Mr. Mike Upton seconded the motion and it was approved it unanimously.

Discussion of Anderson School District Two Board of Trustees: Mr. Richard Thompson of Thompson & King, who is the legal counsel for the County Board, was introduced by Mr. Nimmer. He was invited to the meeting to provide an expert opinion on the issue of whether or not Anderson School District Two has a vacancy on their Board of Trustees. Mr. Thompson referenced a Supreme Court decision from 1905 State vs. Stickley dealing with a town council member that submitted a resignation to the town, three days later publically announced that he was withdrawing his resignation. He was not able to retrieve his actual letter of resignation but declared it at the town hall. The town had gone ahead with another election and filled his seat. The case went to the Supreme Court and they ruled it was not an effective resignation because it had not been acted on and, therefore, he was free to withdraw his resignation and the town should not have authorized and held an election to fill his seat. Mr. Thompson said he feels this is a persuasive case and very similar to the one with District Two. Mr. Thompson continued to explain a few other examples of present code under Section 8-1-140 but concluded that was a different scenario than what is happening in District Two.

There was a brief question and answer period between County Board Members and the legal counsel.

In closing, Mr. Thompson was of the opinion that there is no vacancy on the School Board of District Two since the resignation submitted from a member serving on the school board was never accepted. If it had been accepted, the board member would be released from the duties once a qualified person was chosen to take their place. He also felt the initial resignation was not valid since it was not signed by the board member as it was sent in an electronic fashion. The actual letter rescinding the resignation was submitted in letter form and signed. This is Mr. Thompson's opinion and he also stated that this is a very unusual situation. He added that since there is a civil suit in place, the best course of action will be to wait for the decision from the Judge overseeing this case. In the meantime, the Anderson County Board of Education has no duty or obligation to carry out on behalf of District Two.

Anderson County Alternative School Report: Mr. Nimmer stated that he and two other Board Members attended the recent Graduation and Award Ceremony held on the May 31, 2019. Mr. David Draisen also attended and described it as a very worthwhile event and encouraged all members who have never experienced an Alternative School graduation to do so. He added, these are students that have been expelled from their home school, have persevered, and were able to graduate adding the system works.

Administrator's Report: Mr. Nimmer, who also attended the Alternative School's graduation, added how very rewarding the event is watching students that don't have much in their life that is positive, being able to turn things around and achieve success.

On Thursday of last week, the Anderson County Legislative Delegation met, the County Board and Alternative School budgets were presented, and unanimously approved. We are set to begin our new fiscal year on July 1st.

Mr. John Martin was unable to attend tonight due to a death in his family.

Financial:

A. Tax Collections YTD vs. Budget: Mr. Nimmer said the monthly financial reports in their packets shows year-to-date revenue for all districts through the end of May are at or near 100% collections. Most of this is due to some growth in local revenue as well as growth in state funds that came in ahead of budget. As a reminder, for the Alternative School and County Board some of our revenue is back loaded in the form of reimbursement. All that has been invoiced and will be collected during the month of June so next month's report will have a final accounting for that. We will also have two months' worth of tax receipts which are collected in arrears that will be booked into the current fiscal year.

B. Assessment Totals: Mr. Nimmer stated the green sheets, which show our assessment totals through May, have virtually remained the same as April which is what we and the districts use as the basis for our budgets for the current year. The growth has been steady and, during the appeal period, we did not lose a lot of value which is a good thing for us especially as we move forward into the fall when these figures plus some growth will be used in invoicing the tax payers for ad valorem taxes for the year 2019.

C. Education Sales & Use Tax: Since the inception of the penny sales tax in March, 2015, we have collected \$93,916,864.01 through the month of May, 2019. As a reminder, 20% comes off the top to be used to roll back debt service millage for all classifications of property. The remaining 80% is used for capital projects.

Old Business: None

New Business:

A. ADM Accounts Payable

B. SFS Accounts Payable

Ms. Brenda Bradberry made a motion to pay both bills, seconded by Dr. Gary Burgess. The Board unanimously approved.

Adjourn: With no further business to discuss, the meeting was adjourned.

Respectfully submitted,

Dr. Gary Burgess, Secretary of the Anderson County Board of Education
This is a true and correct copy of notes taken at the meeting.

ATTACHMENT “4”

3 McQuillin Mun. Corp. § 12:173.4 (3d ed.)

McQuillin The Law of Municipal Corporations July 2019 Update

Chapter 12. Elections, Offices and Officers, Employees and Agents and Municipal Departments

VIII. Tenure

§ 12:173.4. Resignation of officer

West's Key Number Digest

- West's Key Number Digest, Municipal Corporations ¶150
- West's Key Number Digest, Officers and Public Employees ¶62

Legal Encyclopedias

- Am. Jur. 2d, Municipal Corporations, Etc. § 253

The **resignation** of an office is the act of giving it up and is synonymous with surrender, relinquishment, abandonment or renunciation.¹ Such an act is voluntary and is not valid if made under duress or coercion,² i.e., as the consequence of one exercising his or her First Amendment rights.³ It constitutes a complete break in service and an absolute termination of relations.⁴ It cannot usually be tacked to later periods of service for seniority or promotional purposes.⁵ However, previously acquired civil service status may not be lost by **resignation** where there was immediate rehiring of the same person without any interruption of that person's service or employment.⁶

At common law officers were not at liberty to **resign** their offices,⁷ and many states have enforced this common-law rule.⁸ This is not to say that in all cases the officer cannot **resign**—rather, that the right to **resign** is subordinate to the right of the people to the maintenance of orderly government,⁹ and that the **resignation** must be accepted to become effective.¹⁰ However, in most jurisdictions the right to **resign** a public office is sanctioned.¹¹

Where the **resignation** must be accomplished according to required formalities, they must usually be complied with to make the **resignation** effective.¹² Thus, where the **resignation** must be tendered in a particular manner and published, a communication to the mayor and council tendering a **resignation** is insufficient.¹³ Laws generally require the **resignation** of municipal officers to be in writing,¹⁴ signed¹⁵ and, not infrequently, that it be recorded.¹⁶ But a parol **resignation** will be held good if the law does not require it to be in writing.¹⁷

§ 12:173.4. Resignation of officer, 3 McQuillin Mun. Corp. § 12:173.4 (3d ed.)

In jurisdictions not requiring acceptance of **resignations**, the **resignation** takes effect immediately upon the date mentioned in the written **resignation**. A **resignation** to take effect on a specified date becomes effective at midnight of the previous day, the rule being that the law does not recognize fractions of a day.¹⁸ A **resignation** accepted and the acceptance acquiesced in by the **resigning** officer is effectual, although addressed to the wrong officers, and so accepted.¹⁹

A **resignation** that must be acted upon in some way may be withdrawn before acted upon,²⁰ but not, according to the usual view, after it has been accepted,²¹ although there is authority to the contrary.²² If it need not be accepted or otherwise acted upon, it usually cannot be withdrawn after its effective date.²³ An individual who was present at a meeting of the council where that individual's **resignation** was read and accepted and made no protest may be estopped from subsequently asserting that the acceptance was unauthorized.²⁴ However, withdrawal of a **resignation** before its effective date and prior to acceptance is valid.²⁵ Although the contrary has been held,²⁶ a **resigning** officer may be required to continue in the discharge of his or her duties until a successor is elected or appointed²⁷ and qualified, and mandamus will lie to compel that duty.²⁸

Westlaw. © 2019 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1
 - Ill.
Jacobsen v. City of Chicago, 191 Ill. App. 511, 1915 WL 1802 (1st Dist. 1915)
 - Mass.
Jones v. Town of Wayland, 4 Mass. App. Ct. 725, 358 N.E.2d 822 (1976), judgment aff'd, 374 Mass. 249, 373 N.E.2d 199 (1978)
 - N.Y.
Abrams v. Ryan, 244 A.D. 284, 279 N.Y.S. 321 (1st Dep't 1935)
- 2
 - Cal.
Keithley v. Civil Service Bd., 11 Cal. App. 3d 443, 89 Cal. Rptr. 809 (1st Dist. 1970) (coerced **resignation** as tantamount to discharge)
 - Mass.
Jones v. Town of Wayland, 4 Mass. App. Ct. 725, 358 N.E.2d 822 (1976), judgment aff'd, 374 Mass. 249, 373 N.E.2d 199 (1978)
 - Mo.
Hess v. Bennett, 554 S.W.2d 503 (Mo. Ct. App. 1977) (failure to show duress, fraud or involuntariness in **resignations** of police officers given option to **resign** or be suspended)
 - N.J.
Dolphin v. Mayor and Council of Town of Kearny, 116 N.J.L. 58, 181 A. 644 (N.J. Sup. Ct. 1935) (certiorari allowed where applicant required to sign undated **resignation** as condition to appointment)
 - N.Y.
Jocher v. Brennan, 123 N.Y.S.2d 779 (Sup 1953) (no duress where one obtained appointment by fraud and was given choice of **resigning**)
 - Tex.
Crouch v. Civil Service Commission of Texas City, 459 S.W.2d 491 (Tex. Civ. App. Houston 14th Dist. 1970), writ refused n.r.e., (Jan. 20, 1971) (**resignation** from public office resulting from duress withdrawable or to be voided)
 - W. Va.
Brumfield v. Board of Ed. of Logan County, 121 W. Va. 725, 6 S.E.2d 238 (1939) (coercion as vitiating **resignation**)
- 3
 - U.S.

§ 12:173.4. Resignation of officer, 3 McQuillin Mun. Corp. § 12:173.4 (3d ed.)

- 4 O'Brien v. City of Greers Ferry, 873 F.2d 1115 (8th Cir. 1989)
Fla.
 Williams v. Baker, 38 So. 2d 221 (Fla. 1948) (commissioners who **resigned** as not authorized to participate in selection of successors)
Ind.
 State ex rel. Palm v. City of Brazil, 225 Ind. 308, 73 N.E.2d 485 (1947)
Minn.
 Frain v. City of St. Paul, 261 Minn. 409, 112 N.W.2d 795 (1962)
Tex.
 Gambill v. City of Denton, 215 S.W.2d 389 (Tex. Civ. App. Fort Worth 1948), dismissed
 5 **N.Y.**
 Doering v. Hinrichs, 289 N.Y. 29, 43 N.E.2d 709 (1942); Hohm v. Onondaga County Civil Service Commission, 286 A.D. 585, 145 N.Y.S.2d 924 (4th Dep't 1955)
 6 **Pa.**
 Appeal of Homer, 404 Pa. 184, 170 A.2d 848 (1961)
 7 **Mass.**
 Warner v. Selectmen of Amherst, 326 Mass. 435, 95 N.E.2d 180 (1950) (no distinction made between elected and appointed officers)
N.J.
 Reeves v. Ferguson, 31 N.J.L. 107, 1864 WL 2662 (N.J. Sup. Ct. 1864)
N.Y.
 Van Orsdall v. Hazard, 3 Hill 243, 1842 WL 4313 (N.Y. Sup 1842)
 8 **U.S.**
 Edwards v. U.S., 103 U.S. 471, 26 L. Ed. 314, 1880 WL 18768 (1880)
Kan.
 State ex rel. Toepke v. Clayton, 27 Kan. 442, 1882 WL 948 (1882)
N.J.
 Fryer v. Norton, 67 N.J.L. 537, 52 A. 476 (N.J. Ct. Err. & App. 1902), affg State v. Norton, 67 N.J.L. 23, 50 A. 661 (N.J. Sup. Ct. 1901), aff'd, 67 N.J.L. 537, 52 A. 476 (N.J. Ct. Err. & App. 1902); Reeves v. Ferguson, 31 N.J.L. 107, 1864 WL 2662 (N.J. Sup. Ct. 1864)
Va.
 Coleman v. Sands, 87 Va. 689, 13 S.E. 148 (1891)
 9 **Ky.**
 Com. ex rel. Wootton v. Berninger, 255 Ky. 451, 74 S.W.2d 932, 95 A.L.R. 213 (1934)
 10 See § 12:173.7.
La.
 Detillier v. Borne, 176 So. 3d 669, 2015 I.E.R. Cas. (BNA) 307911 (La. Ct. App. 5th Cir. 2015) (police officer who signs a **resignation** letter and submits it to the town mayor is bound by the letter; police officer's **resignation** was effective when he signed and delivered it, even though town policy on **resignation** contained a two-week notice requirement, where notice requirement was a conditional one that required notice for those employees to be considered for future employment with town)
 11 **Cal.**
 People v. Porter, 6 Cal. 26, 1856 WL 680 (1856)
Colo.
 People ex rel. Rosenberg v. Keating, 112 Colo. 26, 144 P.2d 992 (1944), following Cragin v. Frohmler, 43 Ariz. 251, 30 P.2d 247 (1934)
Neb.
 State v. Mayor and City Council of City of Lincoln, 4 Neb. 260, 1876 WL 4420 (1876)
N.J.
 City of Newark v. Craster, 28 N.J. Super. 49, 100 A.2d 306 (App. Div. 1953) (**resignation** as distinguished from retirement)
N.Y.

§ 12:173.4. Resignation of officer, 3 McQuillin Mun. Corp. § 12:173.4 (3d ed.)

Formoso v. Kennedy, 5 A.D.2d 332, 171 N.Y.S.2d 482 (1st Dep't 1958), order aff'd, 5 N.Y.2d 830, 181 N.Y.S.2d 505, 155 N.E.2d 401 (1958) (police officer as having right to **resign** without police commissioner's permission); Brescia v. Mugridge, 52 Misc. 2d 859, 276 N.Y.S.2d 947 (Sup 1967), order aff'd, 29 A.D.2d 632, 285 N.Y.S.2d 569 (2d Dep't 1967) (involving village mayor); Logan v. Pressel, 49 Misc. 2d 516, 267 N.Y.S.2d 685 (Sup 1966) (public officer has right to **resign** at any time); Cassidy v. Wilkins, 137 Misc. 748, 244 N.Y.S. 445 (Sup 1930)

Ohio

Reiter v. State ex rel. Durrell, 51 Ohio St. 74, 36 N.E. 943 (1894)

Mass.

Warner v. Selectmen of Amherst, 326 Mass. 435, 95 N.E.2d 180 (1950) (legal effect of **resignation** without complying with statute by filing **resignation** with town clerk as depended upon principles of common law)

Minn.

Matter of Larkin, 415 N.W.2d 79 (Minn. Ct. App. 1987) (police officer's attempted verbal **resignation** as ineffective)

N.Y.

Vescio v. City Manager of City of Yonkers, 69 Misc. 2d 68, 329 N.Y.S.2d 357 (Sup 1972), judgment aff'd, 41 A.D.2d 833, 342 N.Y.S.2d 376 (2d Dep't 1973); Brescia v. Mugridge, 52 Misc. 2d 859, 276 N.Y.S.2d 947 (Sup 1967), order aff'd, 29 A.D.2d 632, 285 N.Y.S.2d 569 (2d Dep't 1967) (**resignation** of village mayor as valid notwithstanding failure to comply with statutory procedure); Logan v. Pressel, 49 Misc. 2d 516, 267 N.Y.S.2d 685 (Sup 1966) (construing statute and determining **resignation** of police commissioner effective under it)

R.I.

DeLuca v. Rhode Island State Bd. of Elections, 119 R.I. 59, 376 A.2d 326 (1977)

N.Y.

Lewis v. Oliver, 4 Abb. Pr. 121, 1857 WL 6886 (N.Y. City Ct. 1857)

Ky.

Blackburn v. City of Paducah, 441 S.W.2d 395 (Ky. 1969) (telegram as sufficient writing); Com. ex rel. Wootton v. Berninger, 255 Ky. 451, 74 S.W.2d 932, 95 A.L.R. 213 (1934); Taylor v. Johnson, 148 Ky. 649, 147 S.W. 375 (1912)

Mass.

Campbell v. City of Boston, 337 Mass. 676, 151 N.E.2d 68 (1958) (**resignation** not in writing as valid despite statute requiring writing)

Minn.

Matter of Larkin, 415 N.W.2d 79 (Minn. Ct. App. 1987) (police officer)

N.Y.

Brescia v. Mugridge, 52 Misc. 2d 859, 276 N.Y.S.2d 947 (Sup 1967), order aff'd, 29 A.D.2d 632, 285 N.Y.S.2d 569 (2d Dep't 1967)

R.I.

DeLuca v. Rhode Island State Bd. of Elections, 119 R.I. 59, 376 A.2d 326 (1977)

Ky.

Com. ex rel. Wootton v. Berninger, 255 Ky. 451, 74 S.W.2d 932, 95 A.L.R. 213 (1934); Lile v. City of Powderly, 612 S.W.2d 762 (Ky. Ct. App. 1981) (board of trustees member to only **resign** by written notice to be recorded)

La.

Detillier v. Borne, 176 So. 3d 669, 2015 I.E.R. Cas. (BNA) 307911 (La. Ct. App. 5th Cir. 2015) (police officer who signs a **resignation** letter and submits it to the town mayor is bound by the letter)

Ill.

Jacobsen v. City of Chicago, 191 Ill. App. 511, 1915 WL 1802 (1st Dist. 1915)

Ind.

State ex rel. Palm v. City of Brazil, 225 Ind. 308, 73 N.E.2d 485 (1947)

N.J.

Loughran v. Mayor and Aldermen of Jersey City, 86 N.J.L. 442, 92 A. 55 (N.J. Sup. Ct. 1914)

§ 12:173.4. Resignation of officer, 3 McQuillin Mun. Corp. § 12:173.4 (3d ed.)

- 19 Cal.
Shade v. Board of Trustees of Redondo Union High SchoolDist. in Los Angeles County, 21 Cal. App. 2d 725, 70 P.2d 490 (2d Dist. 1937)
- Minn.
Byrne v. City of St. Paul, 137 Minn. 235, 163 N.W. 162 (1917)
Acceptance of **resignation** generally, see § 12:173.7.
- 20 Ala.
City of Dothan v. Lucas, 47 Ala. App. 336, 254 So. 2d 341 (Civ. App. 1971)
- Ark.
Rider v. City of Batesville, 220 Ark. 31, 245 S.W.2d 822 (1952) (dictum)
- Cal.
Shade v. Board of Trustees of Redondo Union High SchoolDist. in Los Angeles County, 21 Cal. App. 2d 725, 70 P.2d 490 (2d Dist. 1937)
- Ky.
Com. ex rel. Wootton v. Berninger, 255 Ky. 451, 74 S.W.2d 932, 95 A.L.R. 213 (1934); Ellis v. Van Horn, 245 Ky. 188, 53 S.W.2d 367 (1932)
- Me.
Dostie v. City of Lewiston, 114 Me. 62, 95 A. 353 (1915)
- Tex.
Sawyer v. City of San Antonio, 149 Tex. 408, 234 S.W.2d 398 (1950)
- 21 Ala.
Ex parte Rhea, 426 So. 2d 838 (Ala. 1982) (withdrawal of written **resignation** as effective as required by city procedure for good standing withdrawal)
- Ark.
Rider v. City of Batesville, 220 Ark. 31, 245 S.W.2d 822 (1952) (rule applied as to chief of police)
- Cal.
Moreno v. Cairns, 20 Cal. 2d 531, 127 P.2d 914 (1942); Shade v. Board of Trustees of Redondo Union High SchoolDist. in Los Angeles County, 21 Cal. App. 2d 725, 70 P.2d 490 (2d Dist. 1937)
- Ind.
State ex rel. Palm v. City of Brazil, 225 Ind. 308, 73 N.E.2d 485 (1947) (department members who announced **resignation** date at council meeting because of failure of council to grant demanded pay increase thereby terminated employment not to be restored except by reemployment despite delivery of written withdrawal notice before **resignation** date)
- Ky.
Board of Educ. of Wolfe County v. Rose, 285 Ky. 217, 147 S.W.2d 83, 132 A.L.R. 969 (1940)
- La.
Krasnoff v. City of New Orleans, 209 So. 2d 149 (La. Ct. App. 4th Cir. 1968) (**resignation** not to be revoked after letter of **resignation** offered and approved by employer without knowledge intent to **resign** was other than bona fide)
- Mass.
Warner v. Selectmen of Amherst, 326 Mass. 435, 95 N.E.2d 180 (1950)
- N.Y.
Schwartz v. Board of Estimate of City of New York as Head of New York City Emp. Retirement System, 282 A.D. 663, 122 N.Y.S.2d 136 (1st Dep't 1953), affg Schwartz v. Board of Estimate of City of New York, 203 Misc. 701, 118 N.Y.S.2d 364 (Sup 1953), order aff'd, 282 A.D. 663, 122 N.Y.S.2d 136 (1st Dep't 1953) (board of estimate as having power to withhold granting of permission to withdraw tendered **resignation**); Brescia v. Mugridge, 52 Misc. 2d 859, 276 N.Y.S.2d 947 (Sup 1967), order aff'd, 29 A.D.2d 632, 285 N.Y.S.2d 569 (2d Dep't 1967) (**resignation** received by village clerk as validly withdrawn by village mayor)
- Ohio
State ex rel. Kraft v. City of Massillon, 89 Ohio App. 339, 46 Ohio Op. 129, 102 N.E.2d 39 (5th Dist. Stark County 1951) (officer who submitted **resignation** effective one week later who and relinquished

§ 12:173.4. Resignation of officer, 3 McQuillin Mun. Corp. § 12:173.4 (3d ed.)

position upon detection of official misconduct as estopped to withdraw **resignation** before effective date)

Tenn.

State v. Grace, 113 Tenn. 9, 82 S.W. 485 (1904)

Tex.

Crouch v. Civil Service Commission of Texas City, 459 S.W.2d 491 (Tex. Civ. App. Houston 14th Dist. 1970), writ refused n.r.e., (Jan. 20, 1971); City of Amarillo v. Mendenhall, 276 S.W.2d 868 (Tex. Civ. App. Amarillo 1955), writ refused n.r.e., (Apr. 20, 1955) (accepted and not yet transmitted to civil service commission)

Okla.

Rogers v. Carleton, 1941 OK 58, 188 Okla. 470, 110 P.2d 908 (1941)

N.Y.

Manheim v. McCarthy, 118 N.Y.S.2d 231 (Sup 1952), order aff'd, 284 A.D. 956, 136 N.Y.S.2d 357 (1st Dep't 1954) (even though employee retained on books of agency as employee for sole and limited purpose of allowing him to exhaust accrued benefits)

N.Y.

Daley v. Walsh, 122 Misc. 322, 202 N.Y.S. 750 (Sup 1924)

Ala.

Ex parte Rhea, 426 So. 2d 838 (Ala. 1982) (where written acceptance of **resignation** writing required, withdrawal of **resignation** prior to its effective date and prior to written acceptance as sufficient)

Ark.

Hopper v. Garner, 328 Ark. 516, 944 S.W.2d 540 (1997)

See

Mass.

Jackson v. Chelsea Housing Authority, 327 Mass. 423, 99 N.E.2d 73 (1951) (involving statute requiring service until replacement qualified)

Neb.

State ex rel. Strom v. Marsh, 162 Neb. 593, 77 N.W.2d 163 (1956)

Tex.

Jones v. City of Jefferson, 66 Tex. 576, 1 S.W. 903 (1886)

See

U.S.

U.S. v. Green, 53 F. 769 (C.C.W.D. Mo. 1892); U.S. v. Justices of Lauderdale County, 10 F. 460 (C.C.W.D. Tenn. 1882)

W. Va.

State ex rel. Westfall v. Blair, 87 W. Va. 564, 105 S.E. 830, 19 A.L.R. 35 (1921)

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

**Phillip Ashley, Kevin Craft and
Jimmy Outzs,**

Case No.: 2019-CP-04-1118

Plaintiffs,

vs.

PLAINTIFF'S BRIEF

**Anderson County School District
Two Board of Trustees.**

Defendants.

Plaintiffs, by and through their undersigned attorneys, submit their Brief in Support of their Motion for Temporary Injunction. The case was before the Court for a hearing on June 27, 2019. The Court issued a provisionary ruling limiting Defendants from taking any action against Administrative Personnel and requiring both parties to submit Briefs to the Court on July 18, 2019.

FACTS

On or about May 14, 2019, a member of the Defendant Board, Stu Shirley, (Shirley) tendered an email (Exhibit A) (Email) bearing **Subject: Resignation**. The Email was dated May 14, 2019 and was addressed to the acting Chairperson¹ of the Defendant Board, the other trustees of the Defendant Board, Dr. Richard Rosenberger, Elaine Rider with the News Chronicle, a local newspaper, Susan Shirley and Lester McCall. The Email contained an irrevocable resignation which stated: "Therefore, effective immediately, I resign."

¹ Bonnie Knight is the acting Chairperson due to Brenda Cooley claiming an incapacitating illness as of May 13, 2019, however Cooley still sits on the Board and votes.

As a result of the distribution of the Email to the respective parties, Shirley's name was removed from the School District Two School Board website and his email account was closed. In addition, the Belton News Chronicle published news of Shirley's resignation the very next day, on May 15, 2019, notifying the public at large of his resignation.

On or about May 17, 2019 Shirley submitted a letter (Exhibit C), attempting to rescind his previously submitted irrevocable resignation. This letter was directed solely to the Defendant Board Chair, Brenda Cooley. However, Ms. Cooley had "abdicated" her position as Chair and turned it over to Bonnie Knight on May 13, 2019.

That same day, Brenda Cooley, Board Chair, wrote a letter back to Shirley on School District Two letterhead (Exhibit D) (Letter) claiming she "accepted" Shirley's attempted rescission on behalf of the Anderson County Board of Trustees District Two. However, Ms. Cooley cannot do that, either in her individual capacity or as Board Chairperson, because it is a violation of Board Policy BBAA. (Exhibit E). Of additional note is the Letter was sent in a plain envelope with Bonnie Knight's return address on it. As mentioned earlier, Brenda Cooley had "abdicated" her position as Chair and turned it over to Bonnie Knight.

The recitation of facts in the Attorney General opinion (Opinion) states "Both letters were sent to all member of our Board, and to the administrator, Mr. Nimmer of the Anderson County Board." (Exhibit E, page 1) It is curious whether it was held or did everyone involved believe it had been delivered by its publication.

Page 2 of the Opinion states: "There is no indication that either the Anderson County School District Two Board of Trustees or the Anderson County Board of Education accepted Stu Shirley's resignation before receiving notification of its withdrawal." This fact should have been

resolved prior to the rendering of the Opinion. However, that begs the question: how does one not accept an irrevocable resignation which is "effective immediately"?

On or about May 22, 2019 Joey Nimmer, Administrator of the Anderson County Board of Education, received an email from an attorney (Ms. Lonesse Williams, with White & Story). (Exhibit G)

ARGUMENT

In 1990, the South Carolina Legislature enacted Section 8-1-145 irrevocable resignation of elected office holder to take effect in future; election to fill vacancy. (Exhibit H) This is a case of first impression as the **statute has not been addressed in any court in South Carolina.** **On June 4, 2019 the Attorney General Opinion was sent to The Acting Board Chair, Bonnie Knight, in response to her incomplete and inaccurate inquiry to the AG. (Exhibit I, page 1)**

Defendant Board has adopted the Attorney General's logic and reasoning as set forth in their Return to Plaintiff's Motion for Temporary Stay. (Exhibit J, page 4) In a nutshell, their argument is that Shirley's resignation was not valid due to his rescission being exercised prior to the School Board "accepting" his resignation. It is undisputed that Shirley's name, photo and information were deleted from the Board website. In addition, his email address was deleted. Those affirmative acts were both an acknowledgement and acceptance of Shirley' resignation.

It is patent that under Section 8-1-145 Shirley's resignation did not have to be "accepted" by the Anderson County District Two School Board of Trustees to be valid.

The Plaintiffs do not dispute the argument raised that prior to the enactment of Section 8-1-145 the general rule and greater weight of authority was that a resignation was only valid upon its acceptance by the proper authority. The majority of authority determined that public policy

required a public officer be held to his obligation to avoid the possibility of an entity being without leadership. Those public policy underpinnings are no longer persuasive. The mere fact that there are no decisions or cases since the enactment of the statute may infer that the justification for the policy no longer exists. Technology has allowed the ability to communicate instantaneously and therefore eliminates the concern of "unrepresented" entities to fill vacancies just as effectively as Shirley communicated his resignation.

Also, as noted in Munroe, infra., Defendants position suggests involuntary servitude. We do not believe it would benefit the community to mandate service from a public official who is seeking to "throw off his official character." Edwards, 103 U.S. at 475, State ex rel. Munroe v. City of Poulsbo, 37 P. 3d 319, 323. That is not the case here nor would the School Board be without the ability to readily fill the vacancy.

As stated in the Attorney General Opinion three times, we are dealing with a matter of first impression in South Carolina.

However, this issue was addressed in State of Washington ex rel. Munroe v. City of Poulsbo, 37 P. 3d 319, 109 Wash.App. 672 (Ct. App. 2002). In that case, a city council woman verbally informed all in attendance at a council meeting that she was resigning effective immediately. The next day she turned in her keys and code book. A few hours later she called the mayor and attempted to rescind her resignation. The Court held her resignation was valid and effective immediately. Id. The Court further held the statutory language abrogates the common-law rule and replaced it with the rule that a vacancy occurs upon the "effective date of the resignation." State of Washington ex rel. Munroe v. City of Poulsbo, supra.

Notwithstanding the unambiguous language of Section 8-1-145, the AG Opinion is based solely on cases decided prior to the statute being adopted. Moreover, the reasoning in the Opinion circumvents the plain meaning of the statute.

More specifically, the Attorney General Opinion states that a resignation is not complete until it is either expressly or by implication accepted by the proper authorities. However, that disregards the plain unambiguous language of S. C. Code of Laws Sec. 8-1-145 which states.

- (A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.
- (B) An election must be held in accordance with the provisions of Section 7-13-190 or other applicable provision of law to fill the office to be vacated as if the vacancy occurred on the date written irrevocable resignation is submitted.
- (C) The newly elected official may not take office until the vacancy actually occurs.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." **Hodges v. Rainey**, 341 S.C. 79, 85 533 S.E. 2d 578, 581 (2000).

Inasmuch as Section 8-1-145 has not been previously analyzed or tested, the Opinion tends to gloss over the "plain meaning" of the statute and ignores the Supreme Court's previous holdings in **State v. Sweat**, 386 S.C. 339 (2010); **State v. Hoyle**, 397 S.C. 622 (2012) and later in which it was determined the Court should look to the plain meaning of the statute. **Binney v. State**, 384 S.C. 539 (2009). If the language is unambiguous and conveys a clear and definite meaning, then the rules of the statutory interpretation are not needed and the court has no right to impose a different meaning. **State v. Gaines**, 380 S.C. 23 (2008). There is no misunderstanding the language of Section 8-1-145.

The Attorney General Opinion then attempts to analyze Senator Martshink's statements and strains the intent by wanting to "limit" the application of the statute. **If** that were the legislative intent the legislature could have easily incorporated language to that effect and could have easily carved out that exception. Moreover, **if** they had wanted to further give deference to existing common law and the "acceptance" the legislature could have done so. **However, they did neither.**

In addition, on page 6 of the Attorney General Opinion they "infer" the use of the word "may" as opposed to "shall" does not prohibit an office holder from submitting a written resignation that is revocable. This interpretation requires adherence to the theory that the "proper authority" must "accept" a resignation for it to be valid in spite of the clear, unambiguous language of the statute. The use of "may" absolutely is permissive as opposed to mandatory which therefore allows for the submission of either an irrevocable resignation to be effective at a future specific "date" whether that be several days, weeks or months in the future OR as in the instant matter "effective immediately".

While the AG referenced the S 8-1-145 in the Opinion, it failed to recognize and acknowledge that the statute superseded the common law on which the AG relied to reach its conclusions.

Defendant Board has raised the argument that Shirley's resignation was invalid because it was not in accord with Board policy BBBC. (Exhibit K) This is a stretch on two fronts: (1) Statute Section 8-1-145 clearly supersedes any Board policy; and (2) As reflected in Shirley's affidavit (Exhibit L, paragraph 11) he was not aware of the policy. It is disingenuous of Shirley to backtrack and infer it would have swayed his decision or otherwise invalidate his actions.

Furthermore, evening assuming for argument only that Section 8-1-145 did not supersede Board Policy, "Policy BBBC provides that the method of resigning is solely to submit a letter of resignation to the chairman." (Aff. of Dr. Tiffany N. Richardson, para 6) (Exhibit O). Thus, based on application of policy BBBC, Shirley's resignation was effective upon receipt of the Email by the Ms. Knight. Id.

In summary, the issue before the Court is whether the resignation of Shirley dated May 14, 2019 was valid and irrevocable. As discussed above, Plaintiffs contend it was.

CONCLUSION

The Opinion disregards the statute. The foundation of the Opinion rests upon the common law. However, Section 8-1-145 abrogates the common law and thus vitiates the Opinion. Therefore, Plaintiffs respectfully request that the Court find Shirley's resignation to be valid and irrevocable and grant the injunction thereby allowing the Board to appoint a new member (which could be Shirley) in accordance with its policy and procedure.

Respectfully submitted,

By:

s/Bruce A. Byrholdt
Bar No.: 1071
BYRHOLDT DRAWDY, LLC
2315 N. Main St., Ste. 117
Anderson, SC 29621
Phone: 864-261-3977

s/Kurt Tavernier
Bar No.: 12991
Law Offices of Kurt Tavernier, PA
117 W. Benson St.
Anderson, SC 29624
Phone: 864-222-9142

This 18th day of July 2019
Anderson, South Carolina

Fwd: Resignation

From: Jimmy Ouzts (jouzts@asd2.org)

To: scbuck1030@yahoo.com

Date: Friday, June 7, 2019, 9:20 AM EDT

Jimmy Ouzts
Sent from my iPhone

Begin forwarded message:

From: "William \"Stu\" Shirley" <wshirley@asd2.org>

Date: May 14, 2019 at 7:31:29 AM EDT

To: Brenda Cooley <bcooley@asd2.org>, Jimmy Ouzts <jouzts@asd2.org>, Julia Barnes <jbarnes@asd2.org>, Bonnie Knight <bknight@asd2.org>, Kevin Craft <kcrafft@asd2.org>, Phil Ashley <pashley@asd2.org>, Richard Rosenberger <rosenberger@asd2.org>, Elaine <elaine@bhpnc.com>, Susan Shirley <sashirley@asd2.org>, Lester McCall <lmccall@asd2.org>

Subject: Resignation

Since I managed to quit Football several times in high school, (I didn't like to Practice) I have always tried to make it a rule to finish what I start. Unfortunately after the events of last evening and the last two weeks, it is apparent that I must be the problem and not part of the solution.

The thing that got me the most was two young ladies and a child in the parking lot. They spoke to me and said they supported me but were hurrying to their car. The child was asking what was happening and the lady said shush let's get to the car.

Therefore, effective immediately, I resign. I won't attend another Board meeting nor answer another email on the School email account. I won't be involved in school board business period. Mrs. Susan Shirley, you may at your earliest possible convenience do whatever you normally do to a school email that is no longer required. Mrs. Elaine Rider, you may publish the resignation letter at your convenience.

I Do wish you all the good fortune you can have and will continue to Pray for our Teachers, Staff and Students in District #2.

Stu Shirley

—
Stu Shirley,
Area 1 Trustee



Letter to the editor: unity promoted, 2
MPS holds career day Friday, 3

Inside - 10 pages

Classified/legal ads	7-9
Church	10
Deaths	10
Columns	2
School	10
Birthdays	10
Sports	4-5



USPS 04

Wednesday, May 15, 2019

News-Chronicle

Honora Path

Pastor Dan, Sunday means fun
great seasons, see pages 4 and 5

Volume 28, Issue 20

75¢
The Editor: Steve J. Smith, 111
B Street East, Chronicle Building
The News-Chronicle
10000 100th Ave. S., Suite 100
Brentwood, TN 37027
POSTMASTER:
Send address changes to the
News-Chronicle, P.O. Box 400
Brentwood, TN 37027

School board member quits after heated meeting

Large crowd turns out for possible vote on Rosenberger contract

By Andrew H. Rosenberger

WILMINGTON, N.Y. — Superintendent Dr. Richard Rosenberger avoided being dismissed Monday night during a heated meeting following a meeting full of controversy.

"I have always tried to make it a rule to keep what I hear confidential after the meeting and the last two weeks, it is apparent that I must be the provider and not part of the solution," said Rosenberger in a letter of resignation emailed Tuesday morning.

"The thing that got me the most was two strong ladies and a child in the parking lot. They were angry and said they supported me but were bringing to their car. The

District Two's proposed budget means more taxes

BEYOND A PATH - A proposed budget for District Two means more taxes

child was asking what was happening and the lady said, 'Don't let's get in the car'."

Shirley was elected to the board in November. His replacement will be announced by the board and approved by the Anderson County Board of Education.

The issue that brought a large crowd to the meeting Monday may have centered around a proposed increase of Rosenberger's contract and possible dismissal.

The crowd overfilled the district office meeting room, possibly exceeding fire codes. As a result and based on recommendations from school resource officers, who had been asked to attend, the meeting was moved to the high school auditorium nearby.

Rosenberger was welcomed with applause while several board members were seated.

Following student recognitions and other business, including first-reading by Rosenberger (see story on this page), several people spoke about the issue of Rosenberger's contract.

"He has done a tremendous job," he's

not perfect, said Eric Bagg, pointing out that test scores are down and behavior and discipline are a problem. "I am asking you to save this community," Bagg said.

BHP High School rising senior Ashley Vinton said she was speaking for her school as a voice of the school, asking that Rosenberger be retained as superintendent.

Retired teacher Glenn Stevens asked the board to "take your time, take what we have and build on it."

Board members voted to go into executive session to discuss personnel items. Among the items was the superintendent's evaluation and contract.

After about three hours, the board returned to the stage to take a vote on the same issue.

Kerita Craft and Jimmy Ouzts abstained from the vote. Julia Barnes, Brenda Cooley, Bonnie Knight and Stu Shirley voted to continue the discussion at a special called meeting, which could be held at a soon-to-be-determined date.

Board member Paul Ashley was not at the meeting. Cooley had come to the meeting, despite being hospitalized for a week with pneumonia.

SCHOOL BOARD MEMBERS confer with school resource officers about meeting the District Two meeting to the high school auditorium due to fire codes. Shilling on the floor in front of them is an overflow crowd. The meeting was moved to BHP.



tabbles' EXHIBIT B

May 17, 2019

Ms. Brenda Cooley, Board Chair for Anderson County District #2

Ms. Cooley,

After a long week and much prayer and thought, I have reconsidered resigning my position. I have been contacted by caring people this week who asked me to remain on the board in the position they voted me to represent them on the Board for Anderson County School District #2.

Will you please relay this decision to the Anderson County Board and advise their position.

Thank you,

William R. (Stu) Shirley



ANDERSON COUNTY SCHOOL DISTRICT NO. TWO
BELTON-HONEA PATH SCHOOLS
10990 BELTON-HONEA PATH HIGHWAY
HONEA PATH, SOUTH CAROLINA 29654

May 17, 2019

Dear Mr. Shirley,

I wish to acknowledge receipt of your letter dated May 17, 2019 withdrawing your resignation from the Board of Trustees of Anderson County School District Two submitted on Tuesday, May 14, 2019. On behalf of the Board of Trustees of Anderson County School District Two, I accept the withdrawal of your resignation and am notifying our board members and the Anderson County Board of Education of this development.

Thank you,



Brenda Cooley
Board Chair
Anderson District Two.



Policy BBAA Board Member Authority and Responsibilities

Issued 3/03

Purpose: To establish the basic structure of the authority and responsibilities of the board and its members.

Because all powers of the board of trustees lie in its action as a group, individual board members exercise their authority over district affairs only as they vote to take action at a legal meeting of the board.

In other instances, an individual board member, including the chairman, will have power only when the board, by vote, has delegated authority to him/her. The board will not be bound in any way by any action or statement on the part of any individual board member not delegated by the board.

The board and its members will deal with administrative services through the superintendent and will not give orders to any subordinates of the superintendent either publicly or privately, but may make suggestions and recommendations.

The board will make its members, the district staff and the public aware through its actions and policies that only the board acting as a whole has authority to take official action.

The members of the board of trustees are officers of the state. Constitutional provisions that apply to officers apply to school board members.

Adopted 3/15/76; Revised 7/9/90, 3/10/03

Legal references:

S.C. Constitution:

Article II, Sections 3 & 4 - Definition of qualified electors.

Article XVII, Sections 1 & 1A - Qualifications for office and prohibition against dual office holding.

S.C. Code, 1976, as amended:

Section 7-5-120 - Qualifications for voter registration.

Title 8 - Deals with rights and responsibilities of public officers.

Section 59-15-50 - Oath of board members.

Attorney General's Opinion:

1960-61, No. 1092, p. 164 - Any action taken by the board of trustees must be taken at a regularly called and assembled meeting with a quorum present.

Anderson School District Two



1313 Blue Ridge
Belton, TX
29627

Phil Ashley
PO Box 214
Stonebath, SC

29554-021414

2019 MAY 16 PM 3:10

GREENVILLE SC 29605
16 MAY 2019 PM 3:10





ALAN WILSON
ATTORNEY GENERAL

June 04, 2019

Mrs. Bonnie Knight
Acting Board Chairperson
Anderson County School District No. Two
10990 Belton-Honea Path HWY
Honea Path, South Carolina 29654



Dear Mrs. Knight:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

The administrator of the Anderson County Board of Education received a letter [from an attorney], concluding that there was a vacancy on our Board.

I believe [this] conclusion is incorrect under South Carolina law, and I am writing to you to request your opinion on this matter.

The factual background is as follows: William "Stu" Shirley was elected in November 2018, to a four-year term on our Board. After a contentious Board meeting on May 13, 2019, Mr. Shirley, on May 14, submitted an email resignation to our Board Chair ... On May 17, 2019, Mr. Shirley apparently had second thoughts about his tendered resignation and submitted to our Chairperson another letter rescinding his May 14 resignation. Both letters were sent to all members of our Board, and to the administrator, Mr. Nimmer of the Anderson County Board. On Wednesday, May 22, 2019, Mr. Nimmer received the attached letter ... stating under South Carolina law, the rescission of a resignation was not permitted and accordingly Mr. Shirley's seat was vacant.

[This] letter was provided to our Board at a special meeting on May 22, but our Board took no action on either of Mr. Shirley's letters.

It seems clear to me that [the letter's] conclusion is wrong. First, our Board has a policy BBBC ... providing that Board members may resign on thirty days' notice. Secondly, our Board never acted on Mr. Shirley's resignation or his letter of rescission. Thirdly, his rescission took place on May 17, only three days after the resignation letter.

My questions simply stated under these facts are: (1) does a vacancy exist on our Anderson Two Board? and (2) was Mr. Shirley's rescission effective and does he remain a member of the Board?

Law/Analysis

It is this Office's opinion that a court likely would hold a member of a school district board of trustees may revoke a tendered resignation before it is accepted. Answering whether a particular board member has vacated his office would require this Office to make factual determinations which are beyond the scope of this Office's opinions. See Op. S.C. Att'y Gen., 2012 WL 1371025, at *2 (April 11, 2012). Instead, this opinion will generally assume facts as provided in the request letter for purposes of providing legal analysis.

The following additional facts recounted in the request letter and attached materials are pertinent to this opinion. Board member Stu Shirley submitted a resignation letter on May 14, 2019 which explicitly stated it was "effective immediately." This letter was sent via email to recipients which appear to board members of Anderson County School District No. Two. On May 17, 2019, Stu Shirley sent a rescission letter sent to Brenda Cooley, chairperson for the board, withdrawing his resignation and asked, "Will you please relay this decision to the Anderson County Board and advise their position?" Mrs. Brenda Cooley replied May 17, 2019 acknowledging receipt of the rescission letter and stating she would notify the members of Anderson County School District Two board of trustees and the Anderson County Board of Education. There is no indication that either the Anderson County School District Two board of trustees or the Anderson County Board of Education accepted Stu Shirley's resignation before receiving notification of its withdrawal. On May 22, 2019, Joey Nimmer, Administrator of the Anderson County Board of Education, received an email from an attorney that analyzed whether a vacancy exists on the Anderson County School District Two board of trustees as a result of the resignation and rescission letters. Ultimately, the email concluded:

Relying on SC Code 8-1-145 and the plain language of the board member's May 14th resignation notice, it is fair to conclude that the resignation was effective as of May 14, 2019, and was irrevocable.* It then follows that there is a vacancy on Anderson School District Two's Board of Trustees, which must be filled by the Anderson County Board of Education.

It appears that the resolution to the questions presented in the request letter depends on whether S.C. Code Ann. § 8-1-145 does, in fact, mandate that the resignation letter is irrevocable such that Mr. Shirley could not withdraw it even before it was accepted. This Office has not identified any decisions of our state courts or prior opinions of this Office which have interpreted Section 8-1-145. Therefore, this opinion next examines how our state courts have addressed the issue of resignation and attempted rescission, this Office's prior opinions that have addressed similar circumstances, and relevant legislative acts, before applying the rules of statutory construction to interpret S.C. Code Ann. § 8-1-145.

In State v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908), the South Carolina Supreme Court addressed the issue of which persons were authorized members of the town council of Port Royal in light of the resignations of several members, the withdraw of those resignations, and subsequent elections for those member's seats. The Court analyzed what the effect of an unconditional resignation is as follows:

The remaining questions presented by the petition and return all depend upon whether a public officer, who has tendered his resignation unconditionally, can withdraw the same before acceptance; or what is the effect of an unconditional resignation. On this question the authorities are not in accord. There is a line of cases maintaining the proposition that an unconditional resignation tendered to the authority entitled to receive it cannot be withdrawn. State v. Fitts, 49 Ala. 402; State v. Hauss, 43 Ind. 105, 13 Am. Rep. 384; State ex rel. Kirtley v. Augustine, 113 Mo. 21, 20 S. W. 651, 35 Am. St. Rep. 696; State v. Clarke, 3 Nev. 566. On the other hand at common law and in a great number of the states the doctrine prevails that the resignation of a public officer is not complete until it is either expressly or by implication accepted by the proper authorities. State v. Clayton, 27 Kan. 442, 41 Am. Rep. 418; Coleman v. Snads, 87 Va. 689, 13 S. E. 148; State v. Ferguson, 31 N. J. Law, 107; Van Orsdall v. Hazard, 3 Hill (N. Y.) 243; Edwards v. United States, 103 U. S. 471, 26 L. Ed. 314; Hoke v. Henderson, 15 N. C. 1, 25 Am. Dec. 677; 1 Dillon, Munic. Corp. (3d Ed.) 249. In the case of State v. Ancker, 2 Rich. Law, 245, this rule was applied to the resignation of certain officers and members of a church, the court saying: "The question is whether such a resignation has been made and accepted according to law, and in a way obligatory on all the parties to this controversy. To make it so there must have been both a resignation cum animo and an acceptance of it on the part of the acting and responsible government at the time." In the absence of statute this rule is supported by the better reasoning and the greater weight of authorities, and has been adopted by the Supreme Court of the United States. Edwards v. United States, 103 U. S. 471, 26 L. Ed. 314. Until the tender or offer to resign is accepted by the proper authority, it can be withdrawn. 1 Dillon, Munic. Corp. (3d Ed.) 249; State v. Clayton, 27 Kan. 442, 41 Am. Rep. 418, and note. Applying the foregoing principles of law to the undisputed facts of this case, the resignation of Stickle as intendant was made to the proper authority to receive it, the wardens of the town, and if it had been promptly accepted by them, it could not have been recalled; but there was no attempted acceptance until nearly a month thereafter. In the meantime, certainly on the night of the third day after his resignation was tendered, at the request of a majority of the qualified voters of the town in mass meeting, and in the presence of F. W. Scheper, Jr., clerk and treasurer, he withdrew his resignation as intendant. True he did not get possession of the paper on which his resignation was written. This was in the custody of Scheper, the clerk and treasurer; but the wardens of the town had notice of the public withdrawal of Stickley's resignation,

and it was not necessary to make his withdrawal effectual that the formal paper resignation be secured by him. Stickley having withdrawn his resignation before its acceptance by the wardens of which they had notice, under the principle heretofore announced he holds his position as intendant as against any election held after such withdrawal.

Id. at 213 (emphasis added). The analysis above demonstrates that the Court considered and rejected the position that an unconditional resignation is irrevocable as soon as it is offered. Instead, the Court adopted the common law principle that resignations may be withdrawn at any time until the proper authority receives and accepts it. Further, in Rogers v. Coleman, 245 S.C. 32, 34, 138 S.E.2d 415, 417 (1964), the Court held that even when a public officer's resignation is accepted, he "continues in office until a successor is qualified where the statute or Constitution so provides."

This Office has repeatedly cited the Stickley decision when opining whether a resignation is effective or may still be revoked. This Office's July 10, 1986 opinion stated:

To have an effective resignation, the resignation must be tendered by the official and accepted by the appropriate governmental body ... There must be an intent on the part of the individual to resign. Furthermore, a resignation may be revoked at any time before the date upon which the resignation was to take effect. See Ops. Att'y Gen. dated November 28, 1941 and December 1, 1965; (enclosed) Jernigan v. Stickley, supra.

1986 S.C. Op. Att'y Gen. 245 (July 10, 1986). While the opinion above stated that a resignation may be revoked at any time before the effective date of the resignation, the General Assembly subsequently passed legislation that provided authority for calling a special election to fill the pending vacancy if the officer submits an "irrevocable resignation." 1988 Act No. 294, §1. The Act provided the following procedure to permit a special election:

Whenever any person holding an elective office in this State is elected or appointed to another office, the person may tender an irrevocable resignation to be effective at a future date, and an election may be held in accordance with applicable provisions of law to fill that office as if it had become vacant on the date the officeholder is certified to have won election to his new office. The newly elected official shall not take office until a vacancy occurs.

Id. A July 11, 1989 article published in The State newspaper described one such resignation and the legislative intent behind the Act as follows:

Rep. Hearn wants to remain in her House seat until Nov. 1, when she is scheduled to replace Julius Murray as a member of the Alcoholic Beverage Control Commission as an appointee of Gov. Carroll Campbell. She announced last

month that she would officially resign her House seat "on or before Oct. 31," and sent a letter to [House Speaker] Sheheen with that information.

It used to be that an officeholder had to resign outright before any election could take place. But under a law passed last year, sponsored chiefly by Sen. Sherry Martschink, R- Charleston, the special election process can begin to replace a resigning officeholder once the official issues an irrevocable resignation for a future date.

...

Sen. Martschink said the intent was to apply to all people leaving elective office for another office, appointive or elective.

Rep. Hearn and the potential candidates for the House 76 seat say they don't want the district to go without representation.

It takes 18 weeks from the time a "writ of election" is issued until a winner can be declared including time for primaries, the general election, certifications and appeals. ...

Clark Surratt, Special election remains on hold, The State, July 11, 1989, at 2-B. However, there were complaints that the Act was "ambiguous" because it created a vacancy that related back to the date an officeholder won election to a new office and did not provide when a vacancy would be deemed to occur if an office holder assumed an appointive position. Id. During the following legislative session, the General Assembly enacted 1990 Act No. 382 which repealed 1988 Act No. 294 and added Section 8-1-145 to the South Carolina Code.

Section 8-1-145 reads as follows:

- (A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.
- (B) An election must be held in accordance with the provisions of Section 7-13-190 or other applicable provisions of law to fill the office to be vacated as if the vacancy occurred on the date the written irrevocable resignation is submitted.
- (C) The newly elected official may not take office until the vacancy actually occurs.

S.C. Code Ann. § 8-1-145.

As stated above, this Office has not identified any decisions of our state courts or prior opinions of this Office which have interpreted Section 8-1-145 and therefore, will apply the rules

of statutory construction as a matter of first impression. Statutory construction of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute "would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect." Duke Energy Corp. v. S. Carolina Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers."). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

Essentially, the question presented requires an interpretation of whether the phrase "may submit a written irrevocable resignation," in Section 8-1-145(A), prohibits an official from submitting a written resignation which may be rescinded prior to its acceptance by the proper authority as the Court upheld in State v. Stickley, *supra*. It is this Office's opinion that a court would likely find Section 8-1-145(A) does not prohibit an office holder from submitting a written resignation that is revocable prior to acceptance by the proper authority. First, the plain language of the subsection (A) uses the word "may" which is normally considered to be permissive, but can also be interpreted as "shall" in certain circumstances.

Ordinarily, the use of the word "may" in a statute signifies permission and generally means the action spoken of is optional or discretionary. Robertson v. State, 276 S.C. 356, 278 S.E.2d 770 (1981). But, when the question arises whether "may" is to be interpreted as mandatory or permissive in a particular statute, legislative intent is controlling. *Id.* And the use of the word "may" in a statute can be interpreted to mean "shall" *Id.* This is especially so where the original statute used the term "shall" but a later amendment uses the term "may", and there is no explanation for the change in terminology. *Id.*

T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 402, 450 S.E.2d 87, 95 (Ct. App. 1994). Because 1988 Act No. 294, §1 originally used the word "may" in a manner that suggests it was intended to be permissive ("may tender an irrevocable resignation to be effective at a future date"), this tends to support the interpretation that the General Assembly intended to maintain the procedure as one which is permissive rather than mandatory when it codified Section 8-1-145(A).

In fact, 1988 Act No. 294 and the statements by Senator Martschink demonstrate that the procedures for calling a special election in Section 8-1-145 are not intended to address every resignation of a public official in all instances. Rather, the legislative intent behind the adoption of Section 8-1-145 appears to address the limited situation where a public officer who holds an elective office intends to accept another office and, in such a case, to develop a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law. Subsection (B) explicitly states that the elections called thereunder must comply with the provisions of Section 7-13-190. Section 7-13-190 establishes the schedule for filing, nominations, and holding a special election according to when the vacancy in office occurs. When an officer submits an irrevocable resignation, Section 8-1-145(B) allows the scheduled vacancy to be backdated to start "on the date the written irrevocable resignation is submitted." Section 7-13-190's schedule for holding a special election can begin at an earlier date and shorten or eliminate the vacancy in office caused by the resignation. Section 8-1-145(C) anticipates that the specific date set in an irrevocable resignation may be so far in advance that the special election may be held before the official has left his seat. In such a case, subsection (C) prohibits the newly elected official from taking office until the vacancy "actually occurs." When Section 8-1-145(A) is read in conjunction with these provisions, a court likely would conclude that the General Assembly did not mean to rewrite the common law¹ regarding the resignation of public officers, but instead, it merely intended to provide a way for those elective officers who want to accept a new office to resign prospectively and thereby shorten the length of the vacancies that would otherwise occur.

While this Office has not previously opined on Section 8-1-145, we have issued opinions regarding when a resignation is effective since its passage. In an October 10, 2013 opinion, more than twenty years after Section 8-1-145 was enacted, this Office explained:

In order for a public officer's resignation to be legally effective, it must be tendered to and accepted by the person or entity authorized to receive it. See State v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908) (adopting doctrine that "the resignation of a public officer is not complete until it is either expressly or by implication accepted by the proper authorities"); Op. S.C. Att'y Gen., 1996 WL

¹ See Hoogenboom v. City of Beaufort, 315 S.C. 306, 318, 433 S.E.2d 875, 884, n.5 (Ct. App. 1992), adhered to on reh'g (Apr. 29, 1993).

The Legislature is presumed to enact legislation with reference to existing law, and there is a strong presumption that it does not intend by statute to change common law rules. See Columbia Real Estate & Trust Co. v. Royal Exchange Assurance, 132 S.C. 427, 128 S.E. 865 (1924). A statute is not to be construed as in derogation of common law rights if another interpretation is reasonable. See id. Statutes in derogation of common law are to be construed strictly to preserve vested rights. See Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968).

549527 (Aug. 7, 1996) ("A written resignation is to be tendered to the entity or person authorized by law to receive it.... To be effective, the tendered resignation must be accepted by the appropriate entity or person."). Such a doctrine has been recognized by numerous other jurisdictions. Furthermore, the "[m]ere announcement of a public officer's intent to resign is insufficient to effectuate the resignation. Rather, the public officer must intend to resign, actually tender his resignation, and have the resignation accepted by the appropriate public body." 8 S.C. Jur. Public Officers and Public Employees § 45 (citing Op. S.C. Att'y Gen., 1986 WL 192036 (July 10, 1986) (county board member's announcement of intent to resign with no further action was ineffective; resignation must be tendered to and accepted by appropriate body, the county council, to be effective)).

Op. S.C. Att'y Gen., 2013 WL 5763372 (October 10, 2013). Because there has not been a change to the statute since this opinion was issued, it continues to be the opinion of this Office that a resignation submitted by a public officer is not effective until it has been accepted by the public body that is authorized to receive it. See Op. S.C. Att'y Gen., 2017 WL 5203263 (October 31, 2017) ("This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law.").

Conclusion

It is this Office's opinion that a court likely would hold a member of a school district board of trustees may revoke a tendered resignation before it is accepted. As is discussed more fully above, the legislative intent behind the adoption of Section 8-1-145 appears to address the limited situation where a public officer who holds an elective office intends to accept another office and, in such a case, to develop a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law. It continues to be the opinion of this Office that a resignation submitted by a public officer is not effective until it has been accepted by the public body that is authorized to receive it. Op. S.C. Att'y Gen., 2013 WL 5763372 (October 10, 2013).

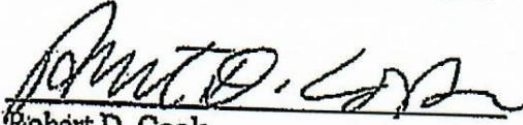
Sincerely,



Matthew Houck
Assistant Attorney General

Mrs. Bonnie Knight
Page 9
June 04, 2019

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General

Fwd: Vacancy Matter

From: Ashley Story (astory@sodacitylaw.com)

To: scbuck1030@yahoo.com

Date: Wednesday, June 12, 2019, 08:22 PM EDT

Get Outlook for iOS

From: Joey Nimmer <jnimmer@boardofed.net>

Sent: Wednesday, May 22, 2019 4:34:35 PM

To: Lonnese Williams

Cc: Ashley Story

Subject: Re: Vacancy Matter

Thank you so much for your assistance with this matter. Have you or will you provide this information to the School District? If you deem appropriate as we discussed, please do so. Thank you again.

Joey Nimmer, Administrator
Anderson County Board of Education
907 North Main Street, Suite 202
Anderson, SC. 29621
864-225-0591 (office)
864-844-4610 (cell)

On May 22, 2019, at 4:24 PM, Lonnese Williams <williams@sodacitylaw.com> wrote:

Dear Mr. Nimmer,

As we discussed today, you requested for an opinion regarding whether there is a vacancy concerning Anderson School District Two's Board of Trustees. Specifically, you asked whether a vacancy exists after a board member provided written notification of his immediate resignation and then subsequently provided a letter rescinding his resignation, which was accepted by one board member.

The facts were presented to me as follows: the board member submitted his written resignation to all board members via email, stated that it was "effective immediately," and further wrote that he would not "attend another meeting or [answer] emails." This resignation was dated May 14, 2019. Three days later, on May 17, 2019, the board member provided a letter rescinding his resignation. This letter of rescission was given to one board member and was "accepted" on behalf of the board.

Specifically, Board Policies BBAA, BBBC, and BBBE assist with answering your question. Board Policy BBBC provides the manner in which a board member should provide notice of his/her resignation to the board; however, this policy is silent with regard to the rescission of a written resignation. Despite its silence on the rescission issue, Board Policy BBAA – Board Member Authority and Responsibilities – directly references S.C. Code Title 8. S.C. Code 8-1-145, which applies to elected officials such as school board members, is a state statute providing that "[a] person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date." Board Policy BBBE provides that "[i]n the case of a vacancy on the board, such vacancy will be filled by appointment by the Anderson County Board of Education. . . ." (citing 1982 Act 509 and



1983 Act 227, which both mirror Board Policy BBBE and S.C. Code 59-16-60 concerning Anderson County Board of Education's authority to appoint a successor upon a vacancy on the district level board of trustees).

Relying on SC Code 8-1-145 and the plain language of the board member's May 14th resignation notice, it is fair to conclude that the resignation was effective as of May 14, 2019, and was irrevocable.* It then follows that there is a vacancy on Anderson School District Two's Board of Trustees, which must be filled by the Anderson County Board of Education.

Referenced above, Anderson School District Two's Board Policy BBAA provides that "... all powers of the board of trustees lie in its action as a group, individual board members exercise their authority over district affairs only as they vote to take action at a legal meeting of the board" and "the board will not be bound in any way by any action or statement on the part of any individual board member not delegated by the board." With that in mind, I am of the opinion that one board member does not have the authority to accept the resignation revocation.

A vacancy likely exists given the above facts an application of state law, which would supersede Board Policy. If you have additional questions, please let me know.

Thank you.

Lonnesse

*There is a South Carolina case, which was decided in 1908, that speaks to a public official's ability to rescind a resignation. Since, S.C. Code 8-1-145 was enacted in 1990, we believe that this analysis is controlled by S.C. Code 8-1-145.

<image001.png>

Lonnesse P. Williams

Associate Attorney

White & Story, LLC

3614 Landmark Drive, Suite EF

P.O. Box 7036 (29202)

Columbia, SC 29204

T: 803.814.0993

Direct Line: 803.626.1781

F: 803.814.1183

williams@sodacitylaw.com

The information contained in this message may be privileged and/or confidential and protected from disclosure. If the reader of this message is not the intended recipient or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or

HISTORY: 1987 Act No. 127 Section 1, eff June 8, 1987.

SECTION 8-1-145. Irrevocable resignation of elected office holder to take effect in future; election to fill vacancy.

(A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.

(B) An election must be held in accordance with the provisions of Section 7-13-190 or other applicable provisions of law to fill the office to be vacated as if the vacancy occurred on the date the written irrevocable resignation is submitted.

(C) The newly elected official may not take office until the vacancy actually occurs.

HISTORY: 1990 Act No. 382, Section 1, eff March 19, 1990.



accepted by the board. Based on legal precedent, particularly the decision in *State v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908), prior AG Opinions, and an analysis of the import of Code Section 8-1-145, the Attorney General opined as follows: “It continues to be the opinion of this Office that a resignation submitted by a public officer is **not effective until it has been accepted by the public body that is authorized to receive it.**” See Exhibit B, p. 8 (emphasis added). Regarding Section 8-1-145, which refers to an “irrevocable” resignation, the Attorney General’s opinion states: “... a court would likely find Section 8-1-145(A) does not prohibit an office holder from submitting a written resignation that is revocable prior to acceptance by the proper authority.” Nothing in Board policy or state law indicates that Mr. Shirley’s resignation, if valid in the first place, was not revocable or that it could not be withdrawn prior to his Board accepting it. If the resignation is revocable, it can be rescinded.

While a court is not bound by Attorney General opinions, such opinions “should not be disregarded without cogent reason.” *Price v. Watt*, 280 S.C. 510, 513, n. 1, 313 S.E.2d 58, 60, n. 1 (Ct. App. 1984). There is no cogent reason to disregard the Attorney General’s opinion in this case. Defendant Board fully adopts and incorporates herein the logic and reasoning of the Attorney General’s June 4 opinion, which clearly establishes that Shirley’s resignation was lawfully rescinded. For the reasons set forth in the AG opinion, Plaintiffs cannot demonstrate a likelihood of success on the merits of their claim that Shirley was not permitted to withdraw his resignation. For this reason alone, the request for a stay should be denied.

B. Plaintiffs cannot demonstrate that they will suffer irreparable harm if the stay is not granted.

Plaintiffs cannot demonstrate that they will suffer irreparable harm if the stay is not granted. And the relative harm to the Defendant Board if a stay enjoining all Board action is granted greatly outweighs any claimed harm to the Plaintiffs if the stay is not granted. The

Policy BBBC Board Member Resignation

Issued 6/13

Purpose: To establish the basic structure for board member resignation.

If a board member's permanent residence ceases to be in his/her area of the school district as outlined in law, a vacancy is created and such change of permanent residence outside the voting district will be treated as a resignation.

Whenever a board member finds it impossible to complete his/her term of office, he/she will announce his/her desire to resign from the board and submit a letter of resignation to the chairman of the board at least 30 days prior to the effective date of said resignation.

Adopted 7/9/90; Revised 3/10/03, 6/10/13

Legal references:

S.C. Acts and Joint Resolutions:

1982 Act 509 - An Act to provide for boards of trustees of the school districts of Anderson County.

1983 Act 227 - Amends Act 509 of 1982 to provide that vacancies may be filled only until a successor is elected.

Anderson School District Two



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees

Plaintiff,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**AFFIDAVIT OF WILLIAM R. ("STU")
SHIRLEY**

PERSONALLY APPEARED before me, William R. ("Stu") Shirley, and after being first
duly sworn, deposes and says:

1. I am over 18 years of age and I have personal knowledge of the matters set forth
in this Affidavit.
2. I am a member of the Anderson County School District Two Board of Trustees.
3. I was elected to the Board in November 2018, to represent the citizens of what is
referred to as Area 1. My current term is 2018-2022.
4. I ran for the Anderson Two Board of Trustees because I care about our
community, the school district, and the education of the children in our community.
5. I am a graduate of Belton Honea Path High School and a life-long resident of the
Belton Honea Path area.
6. I have been married to my wife Shirley since 1981. My wife recently retired from
District Two. Our son, Clay Shirley, and his wife, Brittany Newman Shirley, both attended
District Two schools, Anderson University, and both now teach in District Two.



7. On the evening of May 13, 2019, the Anderson Two Board of Trustees held a regular Board meeting. On the agenda for that night's meeting was a discussion about the Superintendent's contract. The Board meeting was very contentious. We received legal advice by an attorney from the firm of White & Story, apparently representing the District, who advised us that any Board action against the Superintendent or his contract would result in legal action against Board members and that we would not be covered by the District's insurance policy.

8. Some members of the audience were quite angry during and after the meeting. Three of my fellow Board members, all female, had to be escorted to their cars by security officers. I was personally confronted by three angry men in the auditorium on my way out of the Board meeting and felt threatened. I also feared for my family being threatened.

9. Given what the attorney had said about being sued if we took action concerning the Superintendent and what I felt were threatening statements against me and maybe my family, I thought, at that moment, for the security and safety of myself and my family, it was best for me to resign my seat on the Board.

10. The next day, May 14, 2019, I emailed the Board Chair, Ms. Brenda Cooley, stating I was resigning from the Board. A copy of that email is attached to the Affidavit as Exhibit A. I also sent copies of my emailed resignation notice to all Board members, the Superintendent, and the local newspaper.

11. At the time I resigned, I was unaware of Board Policy BBBC, which requires a resignation to be provided 30 days prior to the effective date. A copy of Policy BBBC is attached as Exhibit B. Under Policy BBBC, I assume my attempted resignation may not even have been valid.

12. After a couple of days, when I calmed down, I began to realize my decision to

resign was too hasty. I also was contacted by members of the public who asked me to stay on the Board. After much thought and prayer, I decided I should withdraw my resignation.

13. On Friday, May 17, 2019, I sent a letter to the Board Chair, Ms. Brenda Cooley, withdrawing my resignation. A copy of my May 17 letter is attached as Exhibit C.

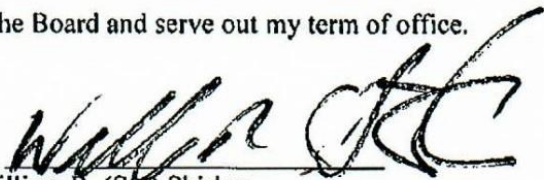
14. On the same day, Ms. Cooley acknowledged receipt of my letter and let me know that she would notify all Board members and the Anderson County Board of Education of my withdrawing my resignation. A copy of Ms. Cooley's May 17 letter is attached as Exhibit D

15. I attended the Special Board meeting on Wednesday, May 22, 2019. The three Board members, who are the plaintiffs in this suit, stated that that my May 14 resignation resulted in an immediate vacancy on the Board, and that my withdrawing the resignation was not valid.

16. The S.C. Attorney General's office has since issued an opinion that I was entitled to withdraw my resignation prior to it being accepted by the Board, which has never happened.

17. As the Attorney General has said, I was entitled to withdraw my resignation because I did so before it was accepted. I believe I am at this time an elected and functioning member of the Anderson Two Board of Trustees. I have attended all Anderson Two Board meetings since May 13, and my intention is to stay on the Board and serve out my term of office.

FURTHER AFFIANT SAITH NOT.

Signature: 

Name: William R. (Stu) Shirley

Title: _____

SWORN to before me this 24th

Day of June 2019.


 Notary for the State of North Carolina

My Commission Expires: April 15, 2023

DANIELLE CHAMPION
 Notary Public
 Brunswick Co., North Carolina
 My Commission Expires April 15, 2023

Policy BC Board Member Conduct

Issued 6/13

Purpose: To establish the basic structure for board member conduct as individuals and while sitting as a board.

Public office is a trust created by the confidence in which the public places the integrity of its public officers. To preserve this confidence, it is the desire of the board to operate under the highest ethical standards.

It is the responsibility of each board member to do the following.

- Become familiar with district policies, rules and regulations, state and federal school laws, and regulations of the state department of education.
- Have a general knowledge of educational aims and objectives of the district.
- Work harmoniously with other board members without trying either to dominate the board or neglect one's share of the work.
- Vote and act in the board meetings impartially for the good of the district.
- Accept the will of the majority vote in all cases and give wholehearted support to the resulting policy.
- Represent the board and district to the public in such a way as to promote both interest and support.
- Refer complaints to the proper school authorities and abstain from individual counsel and action.
- Maintain the confidentiality of all matters discussed in executive session.

Adopted 7/9/90; Revised 3/10/03, 6/10/13

Anderson School District Two



Policy BBBE Unexpired Term Fulfillment/Vacancies

Issued 6/13

Purpose: To establish the basic structure for filling vacancies prior to the end of a term.

In the case of a vacancy on the board, such vacancy will be filled by appointment by the Anderson County Board of Education until a successor is elected in the next general election to take office one week following certification of his/her election.

Adopted 3/10/03; Revised 6/10/13

Legal references:

S.C. Code of Laws, 1976, as amended:

Section 59-19-60 - Removal of trustees; vacancies.

Section 59-19-315 - Commencement of trustee's term of office.

S.C. Acts and Joint Resolutions:

1982 Act 509 - An Act to provide for boards of trustees of the school districts of Anderson County.

1983 Act 227 - Amends Act 509 of 1982 to provide that vacancies may be filled only until a successor is elected.

Anderson School District Two



Affidavit of Dr. Tiffany N. Richardson

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

The undersigned, DR. TIFFANY N. RICHARDSON, swears and affirms the following:

1. I am over the age of 18 and a resident of the State of South Carolina. I have personal knowledge of the facts herein, and, if called as a witness, could testify.
2. I suffer no legal disabilities or impairments that would render my testimony void.
3. I am the General Counsel/Director of Policy and Legal Services for the South Carolina School Boards Association (hereinafter "School Boards Association") and have been employed with the entity for more than five (5) years.
4. The School Boards Association is tasked with providing model policies for school districts as one of its primary services.
5. Anderson County School District Two policy BBBC, Board Member Resignation, is based on a model policy developed by the School Boards Association and adopted with similar content by most, if not all, school districts across the state.
6. Policy BBBC provides that the method of resigning is solely to submit a letter of resignation to the chairman.
7. The School Boards Association maintains that receipt of the letter of resignation by the chairman constitutes acceptance of such resignation by the board, and no further action is required of the board.
8. The School Boards Association also maintains that the 30 days referenced within the policy is to provide the board courtesy notice to facilitate the smooth transition of acquiring a new board member. However, if the 30 days cannot be fulfilled (e.g. the board member moves out of the district or becomes ill), the resignation is still effective.

I declare that, to the best of my knowledge and belief, the information herein is true and complete.

Executed this 18th day of July, 2019.

Tiffany Richardson
Dr. Tiffany N. Richardson



Notary Acknowledgement

I am a Notary Public for Lexington County in the state of South Carolina, and do hereby certify that the above signed personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 18th day of July, 20 19.

Emmar D. Brody
Notary Public

My commission expires April 30, 20 25.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees,

Plaintiffs,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**DEFENDANT’S RESPONSE TO
PLAINTIFFS’S BRIEF**

Defendant Anderson County School District Board of Trustees (the “Board”) submits this response to Plaintiffs’ brief in support of its motion for temporary injunction. While the Board takes issue with some of the statements, assertions, and characterizations in Plaintiffs’ brief,¹ the clear legal question before this Court—whether Board member Shirley’s attempted resignation was revocable—is nevertheless ripe for a decision.

First, Plaintiffs argue that Section 8-1-145 governs this case; it does not. As discussed by the Attorney General in its opinion, Section 8-1-145 has not superseded the common-law rule and

¹ Defendant disputes Plaintiffs’ assertion that Ms. Knight’s letter to the Attorney General was “incomplete and inaccurate.” (Plaintiff’s Brief, p. 3). Plaintiffs do not state how the letter was incomplete or inaccurate. The attorney general’s letter contains the pertinent and undisputed facts, which were provided by Ms. Knight. Defendants would also disagree with the Plaintiffs’ claim that Board Chair Cooley “abdicated” her position as Chair (Plaintiff’s Brief, p. 2) and refutes any insinuation that her stated reason for taking leave from her board chair duties—that she was recovering from a recent hospitalization for bilateral pneumonia—was false. Finally, any notion that the Board authorized Mr. Shirley’s information to be removed from the website, thus demonstrating an acceptance of his resignation, is false and disingenuous. (Plaintiff’s Brief, p. 2). When the Board learned that the Superintendent had ordered Mr. Shirley’s information removed from the website, the acting Board Chair immediately ordered that the information be restored.

does not apply in all instances of public official resignations. The AG's recitation of the legislative history and its statutory construction analysis demonstrates that Section 8-1-145 was limited to situations "where a public officer who holds elective office intends to accept another office" with the purpose of "develop[ing] a mechanism for initiating a special election at an earlier date than would have otherwise been authorized by law." (AG Opinion, p. 7).

Plaintiffs read Section 8-1-145(A) too narrowly, relying entirely on a strict "plain meaning" analysis of only one of the statute's subparts. Plaintiffs ignore, but also do not dispute, the legislative history aspect of the AG's analysis, and they provide no counter argument to the AG's assertion that Section 8-1-145, when read in its entirety as well as with Section 7-3-190 (regarding the process for holding special elections), demonstrates an intent by the legislature NOT to rewrite common law but to address a specific situation. Plaintiffs further ignore the doctrine that the legislature is presumed to have enacted legislation with reference to existing law such that a statute "is not to be construed as in derogation of common law rights if another interpretation is reasonable." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 318, 433 S.E.2d 875, 884 (Ct. App. 1992), *adhered to on reh'g* (Apr. 29, 1993).

Obviously, the *Munroe* decision by the Washington State Court of Appeals cited in Plaintiffs' brief is not binding on this Court. Moreover, *Munroe* deals with a Washington statute, bearing little to no resemblance to Section 8-1-145, and as such, it has no relevance to the question in this case.

Plaintiffs further argue against the Attorney General's opinion as if the AG were a party to this case with its own agenda, asserting that the AG "attempts" to analyze the statements of a legislator and "want[s]" to limit the application of the statute. (Plaintiffs' brief, p. 10). The Attorney General has no dog in this fight, which is perhaps one reason that courts tend to give

great weight to AG opinions where statutory construction is concerned. *See e.g., Armstrong v. Sch. Dist. Five of Lexington & Richland Cty.*, 26 F. Supp. 2d 789, 795 n.2 (D.S.C. 1998) (citing *Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (S.C.1995)). The AG's analysis here is thorough and reliable, and there is no reason for this Court to reject it.

Plaintiffs argue that, even assuming Section 8-1-145 does not apply, Board Policy BBBC should be read to mean that *mere receipt* of the letter of resignation by the Board Chair constitutes acceptance of the resignation and no further action by the Board is required. Plaintiffs rely on an affidavit "opinion" of the General Counsel/Director of Legal Services for the South Carolina School Board Association (SCSBA) who interprets the Board's Policy BBBC in this way. *See* Plaintiff's Exhibit O. This interpretation is essentially that a resignation is effective when it is tendered; however, the Policy contains no such language with that import.² Absent any such language, South Carolina common law is the guiding authority, as stated in *State v. Stickley*, 80 S.C. 64, 61 S.E. 211 (1908), holding that a public officer's resignation must be tendered *and accepted* "by the appropriate governmental body." Furthermore, the notion that mere receipt by a single member, even if the board chair, constitutes an *act of acceptance by the body itself*, is contrary to a fundamental principle of how school boards take official action - that is, as a body, by majority vote. As provided in Board Policy BBBA: "because all powers of the board of trustees lie in its action *as a group*, individual board members exercise their authority over District affairs

² At the same time, the SCSBA affidavit "opinion" seems to disregard the Policy's requirement that a letter of resignation (presumably a signed letter, not an email written in haste and under duress) must be submitted to the Board *at least 30 days prior to the* effective date of said resignation. As the Board argued in its prior memorandum, Shirley's resignation email, which stated it was "effective immediately," is not proper under the Policy and therefore was ineffective *ab initio*. The SCSBA cannot ignore the actual language of Policy BBBC providing for advance notice of a resignation, just like it cannot "read in" a provision which does not exist regarding resignation acceptance.

only as they vote to take action at a legal meeting of the board.” The Board took no action accepting Shirley’s attempted resignation.

For the above reasons, as well as those set forth in its initial Memorandum, the Board’s Motion for Summary Judgment should be granted and Ashley *et. al.*’s request for a declaratory judgment in its favor should be denied. The Board respectfully requests that the Court issue an order declaring that: 1) that there is no vacancy on the Board created by Shirley’s ineffective and subsequently retracted resignation; and 2) that Board member Shirley is a legitimate and lawful Trustee of the District Two Board of Trustees.

Respectfully submitted,

By: s/David N. Lyon

David N. Lyon (S.C. Bar #100676)

Kenneth L. Childs (S.C. Bar #1217)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

Email: dlyon@dfi-lawfirm.com

Email: at kchilds.lawoffice@gmail.com

Attorneys for Defendant Anderson County School
District Two Board of Trustees

July 30, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Phillip Ashley, Kevin Craft and Jimmy Ouzts,
in their capacities as the elected Trustees of
Anderson County School District Two Board
of Trustees

Plaintiff,

v.

Anderson County School District Two Board
of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-04-01118

**NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND A JUDGMENT
PERSUANT TO RULE 59(e)**

YOU WILL PLEASE TAKE NOTICE that Defendant Anderson County School District Two Board of Trustees (hereinafter, the “Board”), by and through its undersigned counsel, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby submits this Motion to reconsider, alter, and amend the Court’s Order signed November 13, 2019, which was filed on November 15, 2019. Specifically, the Board requests that the Court vacate its Order dated November 13, 2019, and issue a revised order finding that: 1) Board member Shirley’s attempted resignation was ineffective, or in the alternative, that his effective resignation was revocable and properly revoked; and 2) for that reason, there is no vacancy on the Board. The Board’s Motion is based on the following grounds:

1. The Court erred in finding that Mr. Shirley’s resignation was valid and irrevocable based on S.C. Code Ann. § 8-1-145 because:

a. Mr. Shirley’s resignation was not an “irrevocable resignation” as contemplated by the statute.

- b. S.C. Code Ann. § 8-1-145 does not prohibit an office holder from submitting a written resignation that is revocable prior to acceptance by the proper authority.

2. The Court erred in determining that acceptance of Shirley's resignation by the Board is no longer required because S.C. Code Ann. § 8-1-145 does not mention acceptance. Even if § 8-1-145 governs this case, the statute's silence as to acceptance cannot operate to abrogate the long-standing common law that the public body must accept the resignation. *See Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 207, 544 S.E.2d 38, 45 (Ct. App. 2001), *aff'd*, 354 S.C. 161, 580 S.E.2d 440 (2003) (holding "a statute is not to be construed in derogation of common law rights if another interpretation is reasonable").

3. The Court erred in ignoring the legislative history of S.C. Code Ann. § 8-1-145, as accurately, thoroughly, and convincingly conveyed in the Attorney General's Opinion, 2019 WL 3243933 (S.C.A.G. June 4, 2019), the legal analysis and conclusion of which were incorporated into the Board's arguments.

4. The Court erred in relying upon facts not in the record and which are disputed by the Board; namely that "the School board removed Shirley's name, photo, and information from its website and also closed his email account." Order, p. 4. There is no evidence in the record that the Defendant Board authorized these actions; on the contrary, the Defendant Board (which is the Board majority) did not authorize and objected to these actions, as stated in Defendant's Response to Plaintiff's Brief, fn 1, filed July 30, 2019. As such, to the extent the Court's Order is based on facts not in evidence which are also disputed, it is fatally flawed.

5. The Court erred in finding that no "formal board measure" was required to accept the resignation and that actions by "agents of the board" are "the functional equivalent of a physical meeting and is tantamount to an acceptance of the resignation." Order, p. 4.

6. The Court erred in finding that a vacancy on the school board should be filled by special election in accordance with S.C. Code Ann. § 8-1-145 because local legislation requires that a vacancy be filled by the Anderson County Board of Education. *See* Act No. 227, 1983. *See also* S.C. Code Ann. § 59-19-60 (“Vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term by the county board of education in the same manner as provided for full-term appointments.”).

In support of this Motion, the Board relies upon the pleadings, the filed affidavits and their attachments on the record, the statutory and common law of the State of South Carolina, and on a Memorandum of Law, which may be filed at or before any hearing by this Court.

For the foregoing reasons, the Board respectfully moves this Court to grant its Motion to reconsider, alter or amend its Order signed November 13, 2019.

The Board also respectfully requests that the Court’s Order be stayed until this Motion can be ruled upon to avoid irreparable damage to the Board.

Respectfully submitted,

DUFF | FREEMAN | LYON, LLC

By: s/David N. Lyon

David T. Duff (SC Bar #1768)

David N. Lyon (SC Bar #100676)

P.O. Box 1486

Columbia, SC 29202

Telephone: (803) 790-0603

Facsimile: (803) 790-0605

Email: dduff@dfi-lawfirm.com

Email: dlyon@dfi-lawfirm.com

Kenneth L. Childs (SC Bar #1217)

Email: kchilds.lawoffice@gmail.com

Attorneys for Defendant Anderson County School
District Two Board of Trustees

November 19, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	C.A. No.: 2019-CP-04-1118
Phillip Ashley, Kevin Craft and	)	
Jimmy Ouzts, in their capacities as	)	
the elected Trustees of Anderson	)	
County School District Two Board	)	
Of Trustees,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	PLAINTIFFS' RETURN TO
	)	DEFENDANT'S MOTION TO
Anderson County School	)	ALTER OR AMEND JUDGMENT
District Two Board of Trustees,	)	
	)	
Defendant.	)	

The Plaintiffs, by and through their undersigned counsel, hereby respond to the Defendant's Motion To Alter or Amend Judgment.

The Plaintiffs hereby move the Defendant's motion be dismissed as they have failed to raise any new issue, fact or argument not set forth in any of their memorandum, brief or response previously filed with the Court nor has the Defendant raised any error of law which would dictate a change in the Court's Order file November 15, 2019.

Respectfully submitted,

Law Offices of Kurt Tavernier, P.A.

s/ Kurt Tavernier

Kurt Tavernier, (SC Bar #12991)
 117 West Benson Street
 Anderson, South Carolina 29624
 (864) 222-9142

Byrholdt & Drawdy

S/ Bruce A. Byrholdt

Bruce A. Byrholdt, (S.C. Bar No. 1071)

2315 N. Main Street

Anderson, South Carolina 29621

864-261-3977

Attorneys for the Plaintiffs

Anderson, South Carolina

November 24, 2019

State of South Carolina
County of Anderson

Court of Common Pleas

Phillip Ashley	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2019-CP-04-01118
	)	
Anderson County School District Two Board of)		
Trustees	)	
	)	
<u>Defendant.</u>	)	

June 27, 2019
Anderson, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge.

A P P E A R A N C E S:

Bruce Byrholdt, Esquire
Attorney for the Plaintiff

Kurt Tavernier, Esquire
Attorney for the Plaintiff

Kenneth Childs,
Attorney for the Defendant

David Duff,
Attorney for the Defendant

David Lyon,
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESSPAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits.

P R O C E E D I N G S

* * * * *

THE COURT: Okay. We're back on -- on the record. Let me -- let me -- because, again -- and y'all -- y'all, how about moving down here so she can hear you. It doesn't matter.

THE ATTORNEYS: (Complying.)

THE COURT: As I told you off the record, I had a jury trial this week so we always have some with backup in case the jury trial resolves itself, and it -- it resolved itself. So today is -- we had 29 motions scheduled. And because of a hard drive failure, I haven't had the ability to look at anything.

But I understand that this motion, which has generated so much interest, is a -- involves a resignation or alleged resignation, a resignation of a school board member and that there's been a declaratory judgment filed asking me to rule on the resignation of the -- on the resignation; is that correct.

MR. BYRHOLDT: That's correct. Of the school board member.

THE COURT: Of the school board member. And that matter is going to be heard at a later date,

1 but it's going to be expedited. And y'all have
2 agreed to get together, do an order shortening the
3 time filing on the pleadings, and then we'll set
4 another hearing on the declaratory judgment action
5 which would end this matter as far as court
6 involvement at this level; is that correct? That's
7 why we're here today?

8 MR. TAVERNIER: That's correct, Your Honor.

9 THE COURT: Your motion for a stay?

10 MR. TAVERNIER: That's correct. That's what
11 was pending for today, but we have agreed to some
12 modifications.

13 THE COURT: Okay. All right. And -- and just
14 for the record, there was some discussion off the
15 record, but I don't want anybody to think that
16 anything really substantial is going on.

17 My concern, that I expressed to the lawyers,
18 was that we were -- you got stuck on a roster with
19 obviously some different kinds of things, and that
20 there was a pending action that my understanding is
21 will be fully pled and ready for me to rule within
22 30 days.

23 And the concern on both sides was -- off the
24 record -- was what do you do in the meantime? And I
25 was hesitant to order a stay because that seemed to

1 me to be a little too intrusive on the school
2 board's actions.

3 So what I told both parties that I was willing
4 to do off the record and I'm saying on the record,
5 is that I'm willing to take this matter under
6 advisement. I have not read anything. I did not
7 know this case was on the roster until lunch until I
8 was told.

9 So what I'm willing to do is, read the
10 documents, take this matter under advisement for
11 30 days. Which, quite frankly, in effect neither
12 party wants me to do. Both parties are not happy
13 with me doing it, but what it allows me to do, is it
14 allows me to build in a little bit of time for the
15 parties to finish up their pleadings.

16 And the concern was, what -- what happens with
17 the school board between now and the time that I
18 rule? Because it will be a 30 days -- I'll have to
19 take it under advisement for 30 days.

20 And, basically, what I think should happen
21 here, and I just -- I don't need you to agree that
22 you agree with it, but I need you to under -- tell
23 me you understand, is that Mr. Shirley -- who I
24 think is the school board member who -- who either
25 resigned or alledgedly resigned -- will remain on

1 the board because I'm taking this matter under
2 advisement and then can participate in school board
3 activities that are routine.

4 Obviously, we're coming up on a school year
5 quick. There's going to be hiring and firing of
6 teachers and other matters that the school board has
7 to handle. But because it's under advisement and
8 because the subject matter of the matter under
9 advisement is a stay, then this -- I would order and
10 hope that y'all would agree that the school board
11 cannot hire or fire anyone at the district level
12 pending a decision by me on the declaratory
13 judgment.

14 Now, that doesn't make anybody happy, but it --
15 it sort of freezes this thing and prevents the
16 school board from doing anything that later might be
17 overturned.

18 And here's the -- here's my logic behind it.
19 If I deny the stay and this declaratory judgment,
20 which is a lawsuit going along over here, if I deny
21 the stay and Mr. Shirley is allowed to vote and they
22 make a district-level decision and then I rule
23 against Mr. Shirley, then you're right back at the
24 beginning with whatever the school board did because
25 if I rule against Mr. Shirley, then his resignation

1 is final, then the school board couldn't do what
2 they had to do.

3 It works exactly the same in the opposite
4 logically than the opposite, that is that if I deny
5 the declaratory judgment and some action is taken,
6 then you're back at the beginning with someone
7 addressing the Court and asking me to resolve
8 something that's been done by the school board that
9 has a questionable member. And I'm not -- I only
10 say that "questionable" because there's a question.
11 I don't -- I'm not making any decision on it.

12 So it seems to me to be completely logically
13 intact to take it under advisement. Let the
14 declaratory judgment move along at an expedited
15 basis. Let the school board perform all of its
16 functions, but prohibit them from hiring or firing
17 at the district level which, I think, takes care of
18 the problem, at least pending the fact that within
19 30 days all of the pleadings will have been filed
20 and we can hold the hearing on the declaratory
21 judgment, or as some of you said, I can rule based
22 on memorandum. I don't mind. Whatever you --
23 whatever you want me to do.

24 Now, again, I know all of y'all are unhappy
25 with that, and I'm not trying to push it down the

1 road. It's just I don't see any other real option
2 today. So I'm not asking you to tell me you're
3 happy because I can tell you're not, but do you
4 understand what I'm doing here today, Mr. Tavernier?

5 MR. TAVERNIER: We do, Your Honor.

6 THE COURT: Mr. Byrholdt, sir?

7 MR. BYRHOLDT: Yes, sir.

8 THE COURT: And Mr. ---

9 MR. CHILDS: Yes, Your Honor. We understand.

10 THE COURT: And -- and can you -- can you
11 all -- y'all get together and do an order that
12 basically implements this and freezes this for at
13 least -- it's really -- I mean, I -- I need to be
14 honest, 30 days is when the pleadings will be filed.

15 There's no way that the pleadings will be filed
16 on the 30th day and we'll have a hearing on the
17 31st. It is more likely to be 30 to 45 days, but
18 normally a lawsuit -- a declaratory judgment action
19 would take a year to 18 months to finish. These
20 parties have agreed to do it within 30 days. And
21 I'm perfectly fine to schedule around my schedule a
22 hearing date, if that's what you want me to do.

23 MR. BYRHOLDT: Yes, sir.

24 THE COURT: Anything you want to add to that?

25 MR. TAVERNIER: No, Your Honor. The lines of

1 communication are open. David and Mr. Childs and I
2 will be able to speak. Mr. Byrholdt's open at seven
3 o'clock in the morning when I am, so we -- we'll get
4 things taken care of.

5 THE COURT: I believe he's insinuating that
6 y'all don't open as early as he is, but I doubt
7 that's true. Anything y'all want to add to it?

8 MR. CHILDS: No, Your Honor.

9 THE COURT: Okay. Like I said, I -- I --
10 whoever's out there that I'm sure is probably mad at
11 your lawyers, don't be. They -- they both want me
12 to do something that I think if I do will cause more
13 problems down the line, quite frankly, and you're
14 just going to have to bear with me.

15 These lawyers have as much experience as I do,
16 but from my point of view, granting the stay or
17 denying the stay will create a bigger problem today
18 than taking it under advisement, so okie doke.

19 MR. BYRHOLDT: Thank you, Your Honor.

20 THE COURT: Y'all do a -- do a scheduling order
21 so we can get all these pleadings filed and I'll
22 rule.

23 MR. TAVERNIER: Very good. Thank you.

24 THE COURT: And all of y'all, thank you for
25 coming. At least you got to see how court works.

(At 4:45 p.m., the proceedings concluded.)

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 27th day of June, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 19, 2020

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

Jul 06 2020

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

s/David N. Lyon

David T. Duff (SC Bar #1768)

David N. Lyon (SC Bar #100676)

Duff Freeman Lyon, LLC

P.O. Box 1486

Columbia, SC 29202

Kenneth L. Childs (SC Bar #1217)

Email: kchilds.lawoffice@gmail.com

ATTORNEYS FOR APPELLANT

June 12, 2020

Columbia, South Carolina