

IN THE CHANCERY COURT OF PIKE COUNTY, MISSISSIPPI

MCCOMB SCHOOL DISTRICT

PLAINTIFF

V.

CAUSE NO.: 22-CV-204-DKH

**CITY OF MCCOMB - BOARD OF
SELECTMAN**

DEFENDANT

**PLAINTIFF'S EMERGENCY PETITION FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT**

COMES NOW, Plaintiff, the McComb School District, by and through its undersigned special counsel and files this Emergency Petition for Injunctive Relief and Declaratory Judgment, pursuant to Miss. Rules of Civil Procedure 65 and 57, as follows:

PARTIES

1. The McComb School District (hereinafter "Plaintiff") is a Mississippi governmental entity whose address is 695 Minnesota Ave, McComb, Pike County, Mississippi 39648.

2. The City of McComb Board of Selectmen, (hereinafter "Defendant") in its official corporate capacity, whose address is 121 3rd Street, McComb, Mississippi 39648, can be served by service of process on their clerk, pursuant to Miss. Rule of Civil Procedure 4.

VENUE AND JURISDICTION

3. The Chancery Court has original jurisdiction of this action. Jurisdiction is proper in the Chancery Court, pursuant to the Miss. Constitution of 1890, Article 6, §§ 159 and Miss. Rules of Civil Procedure 57 and 65.

4. Venue is proper in this Court as the events giving rise to the action affecting the McComb School District occurred in Pike County, Mississippi. Venue is proper in this Court since the Board of Selectmen are the governing body for the city of McComb, which is the county seat of Pike County, Mississippi.

INTRODUCTION

5. McComb School District's student population is composed of children residing within the McComb city limits and those residing within the added territory¹. Upon information and belief, sixteen percent (16%) of the district's student population are children residing within the added territory.

¹

"If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the school board requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, the said school board, after consideration thereof, and with the consent and approval of the school board of the district to which such territory is to be annexed, if such be the case, shall have the power and authority, in its discretion, to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. However, before doing so, the school board must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders adopted under the provisions of this section shall be invalid unless such finding and determination be made. Any order adopted under the provisions of this section shall become final without publication thereof upon such date as may be fixed by the school board but not later than the first day of July next succeeding the date of such order. The taking of territory from existing school districts under the provisions of this section shall not release the property in such territory from assessment and liability for the payment of the outstanding bonds or other indebtedness of the district from which the territory is taken and it shall be the duty of the board of supervisors to continue to levy taxes on such territory in an amount sufficient to pay such territory's pro rata part of all outstanding bonds or other indebtedness existing at the time the territory is taken from such district. In addition, thereto, the territory involved shall become liable for its pro rata part of the outstanding bonds or other indebtedness of the district to which it is annexed and taxes shall be levied thereon for the payment thereof to the same extent as taxes are levied upon the other territory of such district." *Miss. Code Ann. § 37-7-109*

6. Pursuant to Miss. Code Ann. § 37-7-203, the McComb School District Board of Trustees (“Board”) has “at least one member” who resides in and represents the added territory, namely board member Angela Bates. *See* Miss. Code Ann. § 37-7-203. The District’s student population does not exceed thirty percent of students that reside in the added territory; therefore, the Board can only have one member to serve on behalf of the added territory.²

7. On April 12, 2022, the Defendant voted to appoint Ms. Evelle Thomas-Dillon (hereinafter “Dillon”) to the Board for a five-year term. Dillon is a resident of the added territory.

8. The added territory is already represented by Board Member Angela Bates.

9. Dillon’s appointment does not comply with Miss. Code Ann. § 37-7-203, as interpreted. Therefore, Plaintiff petitions this Court to enjoin the Defendant from violating state statute by appointing Dillon to the Board or, in the alternative, reverse Dillon’s appointment to the Board as null and void, in violation of and contrary to state law.

FACTUAL BACKGROUND

10. The McComb School District’s Board of Trustees is a five (5) member board that serves as the official policy-making body for the school district. The McComb School District has an added territory that comprises sixteen percent (16%) of the

² See *Attorney General’s Opinion* to George L. Dorrill, dated March 11, 1992. 1992 WL 614661 (Miss. A.G.)(quoting, *Crawford, et al. v. City of Richton*, Civil Action No. H89-0093(W))

district's student population. Pursuant to Miss. Code Ann. § 37-7-203, four (4) of the members are appointed by Defendant and one (1) member is elected by voters who reside within the added territory. *See* Miss. Code Ann. § 37-7-203.

11. On November 3, 2020 voters of the added territory elected Angela Bates to serve on the Board as the representative of the District's added territory population in the Pike County general election.

12. At the end of February 2022, a vacancy was created when the Vice-President, Elice Rayborn's term expired. The seat remained vacant until the Defendant's recent vote to appoint Dillon to the Board.

13. While the Defendant has the sole authority to appoint four (4) of five (5) members of the Board, the Defendant erred in appointing a resident of the added territory. Under state law, as interpreted by the office of the Attorney General and the United States District Court for the Southern District of Mississippi, the Defendant can only nominate and appoint individuals who reside within McComb city limits. *See* Miss. Code Ann. § 37-7-203. A copy of *Attorney General's Opinion* to George L. Dorrill, dated March 11, 1992. 1992 WL 614661 (Miss. A.G.)(quoting, *Crawford, et al. v. City of Richton*, Civil Action No. H89-0093(W)) is attached hereto as Exhibit "A" and incorporated herein by reference.

14. Upon information and belief, Dillon does not reside within the city limits. Instead, Dillon resides in Summit, Mississippi - which is included in the added territory.

Upon information and belief, Dillon files for homestead exemption on property located in McComb, Mississippi; however, substantial evidence exists showing that she actually resides in Summit, Mississippi. Dillon lists her Summit address on her electronic mail signature block; and, importantly, she uses her Summit address to register her children for school. A copy of the McComb School district student information form, properly redacted to remove student information, is attached hereto as Exhibit “B” and incorporated herein by reference. Upon information and belief, Dillon resides at 1035 Summit Holmesville Road, McComb, Mississippi 39648, outside of the city limits and within the added territory.

15. Defendant violated state statute by appointing Dillon, a Summit resident, to fill the vacant seat reserved for residents of the McComb city limits.³ Said conduct violates state law and the Defendant should be enjoined from doing so.

LAW AND ARGUMENT

16. Injunctive relief should be granted when (1) there exists a substantial likelihood that Plaintiff will prevail on the merits, (2) the injunction is necessary to prevent irreparable injury, (3) threatened injury to the plaintiff outweighs the harm an injunction might do to the Defendant, and (4) entry of a preliminary injunction is consistent with the public interest. *See City of Durant v. Humphreys County Memorial Hosp.*, 587 So.2d 244, 250 (Miss. 1991) (citations omitted).

³ Upon information and belief, the Defendant rejected other applicants for the vacant Board seat because those applicants resided in the added territory and not within the McComb city limits.

1. *Substantial Likelihood of Success on the Merits.*

17. Plaintiff will prevail on the merits because the Defendant's appointment of Dillon to fill the vacancy on the Board violates Miss. Code Ann. § 37-7-203. In particular, Dillon's appointment does not comply with this statute for the following reasons:

(a) First, Dillon does not live within the McComb city limits as required by law. Four (4) of the five (5) members of the Board must reside within the city limits of the McComb School District. *See* Miss. Code Ann. § 37-7-203. The Board of Trustees already has one member, Angela Bates, that does not live within the City limits of McComb. Upon information and belief, Dillon does not reside within the city limits of McComb, Mississippi. She resides in Summit, Mississippi. Therefore, Dillon cannot lawfully fill the vacant seat on the Board of Trustees.

(b) Second, the Defendant lacks authority to "appoint" a Board member to represent the added territory. Dillon is a resident of the added territory and can only represent the added territory if the added territory seat is vacant. To that end, the Defendant lacks the authority to appoint Dillon to the Board because, she can only serve on behalf of the added territory. State law provides that "in the case of a member of the board of trustees who is required to come from the added territory outside the corporate limits . . . , such member of the board of trustees **shall be elected by the qualified electors of the school district residing in such added territory outside the corporate**

limits.” See Miss. Code Ann. § 37-7-203 (emphasis added). Furthermore, when a vacancy exists for the added territory, the Defendant does not have the authority to fill the vacancy by appointment. In this instance, Dillon is replacing a previous Board member, Elice Rayborn, who both resided within the McComb city limits and served on behalf of the citizens of McComb.

(c) Third, the added territory is already represented by Board Member Angela Bates, who resides outside the city limits of McComb, and no other added territory seats are authorized by state law. The added territory of the McComb School District can only be represented by one member because it furnishes less than thirty percent of the District’s student population. “In the event the added territory of a municipal separate school district furnishes fifteen percent (15%) or more of the pupils enrolled in the school of such district, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate limits.” See Miss. Code Ann. § 37-7-203. Further, “in the event the added territory . . . furnishes thirty percent (30%) or more of the pupils enrolled in the school of such district, then not more than two (2) members of the board of trustees of such school district shall be residents of the added territory.” See *id.* In interpreting this statute, the District Court for the Southern District of Mississippi held that “a second member does not represent the added territory **until** thirty percent (30%) or more of the pupils reside [in the added territory].” See 1992 WL 614661 (Miss. A.G.); citing *Crawford et al v. City of Richton*, Civil Action No. H89-

0093 (W) (emphasis added). The added territory of the McComb School District furnishes less than thirty percent (30%) of the student population; therefore, only one seat of the Board may be held by a resident of the added territory. Angela Bates currently holds this position.

2. *The “Equitable Factors” favor Injunction.*

18. The remaining three factors for the court to balance and consider all weigh in favor of granting Plaintiff’s petition. The irreparable harm posed by the Defendant’s unlawful appointment is the deprivation of adequate representation guaranteed to the citizens of McComb, pursuant to state law.

19. Dillon’s appointment reduces the amount of representation promised to the citizens of McComb under Miss. Code Ann. § 37-7-203. Under the current pupil population, McComb citizens are entitled to four (4) of the five (5) seats on the Board of Trustees. *See id.* 18. The Defendant’s attempt to appoint a candidate who resides outside the city limits deprives the citizens of McComb of a right guaranteed by statute.

20. The threatened injury to the Plaintiff outweighs the harm an injunction might do to the Defendant. There is no threat of harm to the Defendant. If anything, enjoining the Defendant from appointing Dillon will only require it to do what is required under state law. The only parties that will be subject to injury are the citizens of McComb, Mississippi and the unrepresented children of the McComb School District.

21. The entry of an injunction is consistent with the public interest as an injunction would preserve the rights guaranteed to the citizens of McComb and the children of the McComb School District. Additionally, an injunction would curtail the Defendant's unlawful attempt to create a Board of Trustees that violates state law.

22. For the reasons discussed above, Plaintiff respectfully requests this Court grant an injunction halting Defendant's appointment of Dillon, a non-resident of the city limits of McComb, Mississippi to the vacant school board seat that can only be held by a resident of McComb.

TEMPORARY RESTRAINING ORDER

23. Plaintiff applies to this Court for a Temporary Restraining Order and a Preliminary Injunction, pursuant to Miss. Rule of Civil Procedure 65.

24. Pursuant to Miss. Rule of Civil Procedure 65, a temporary restraining order may be granted, without notice to the adverse party or his attorney if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and reasons supporting his claim that notice should not be required.

25. Plaintiff should be granted a temporary restraining order and preliminary injunction against Defendant preventing the appointment of Dillon to the vacant School Board seat, until a full and complete hearing on the merits may be held.

26. As detailed above, the appointment of Dillon will cause immediate and irreparable injury or loss and damage to Plaintiff and the citizens of the city of McComb, Mississippi before the opposing party or his attorney may be heard in opposition.

27. Plaintiff will attempt to give notice to Defendant; however, notice should not be required, since the citizens of McComb, Mississippi will not have statutory representation.

28. Plaintiff moves this Court to determine an amount of security for the payment of costs, damages and reasonable attorney's fees that may be suffered by any Defendant later deemed to have been wrongfully restrained.

DECLARATORY JUDGMENT

29. Plaintiffs re-adopt and re-allege paragraphs 1-27.

30. Miss. Rule of Civil Procedure 57 provides as follows:

(a) Procedure. Courts of record within their respective jurisdictions may declare rights, status, and other legal relations regardless of whether further relief is or could be claimed. The court may refuse to render or enter a declaratory judgment where such judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

The procedure for obtaining a declaratory judgment shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The

existence of another adequate remedy does not preclude a judgment for declaratory relief in actions where it is appropriate.

The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar. The judgment in a declaratory relief action may be either affirmative or negative in form and effect.

(b) When Available.

(1) Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status or other legal relations thereunder.

(2) A contract may be construed either before or after there has been a breach thereof. Where an insurer has denied or indicated that it may deny that a contract covers a party's claim against an insured, that party may seek a declaratory judgment construing the contract to cover the claim.

(3) Any person interested as or through an executor, administrator, trustee guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, insolvent, or person under a legal disability, may have a declaration of rights or legal relations in respect thereto:

(A) to ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or,

(B) to direct the executors, administrators, or trustees, to do or abstain from doing any particular act in their fiduciary capacity; or,

(C) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(4) The enumeration in subdivisions (1), (2) and (3) of this rule does not limit or restrict the exercise of the general powers stated in paragraph (a) in any proceeding where declaratory relief is sought in which a judgment will terminate the controversy or remove an uncertainty. Mississippi Rules of

Civil Procedure Rule 57 Declaratory Judgments (Mississippi Rules of Civil Procedure (2018 Edition))

31. Plaintiff seeks a declaration of its rights, status and legal relations with Defendant in relation to Dillon's appointment in violation of Miss. Code Ann. § 37-7-203 and its interpretations. A declaratory judgment would terminate the uncertainty or controversy giving rise to the proceeding.

32. The Chancery Court of Pike County may and should declare the rights, status, and other legal relations in this matter.

33. Defendant's conduct arises from a willful disregard of the law. The plain language of the statute contemplates that "In the event the added territory of a municipal separate school district furnishes fifteen percent (15%) or more of the pupils enrolled in the schools of such district, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate limits."

34. The Mississippi Attorney General has expressly opined that "A second member does not represent the added territory until thirty percent (30%) or more of the students reside there...." See attached Exhibit "A."

35. As a direct and proximate result of Defendant's violation of Mississippi law, by appointing a second member from the added territory when thirty percent (30%) or more of the District's students do not reside there, the District, students, anyone dealing with or contracting with the Board, and citizens within the city limits of McComb

will suffer damages, including but not limited to approval of District policies and business by an unlawfully appointed Board member. Further, the citizens of McComb are entitled to adequate representation consisting of four (4) Board members.

36. Plaintiff moves this Court to determine and declare that Dillon's appointment fails to comply with Miss. Code Ann. § 37-7-203, the opinion of the Attorney General of the State of Mississippi, and the holding of the District Court of the Southern District of Mississippi which held that "a second member does not represent the added territory until thirty percent (30%) or more of the pupils reside [in the added territory]." See 1992 WL 614661 (Miss. A.G.); citing *Crawford et al v. City of Richton*, Civil Action No. H89-0093 (W) (emphasis added).

37. For the reasons discussed above, Plaintiff respectfully requests this Court find and order Defendant's appointment of Dillon, a non-resident of the city limits of McComb, Mississippi, null and void and in violation of and contrary to state law.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that process be issued for Defendant, as required by law, requiring it to defend this suit and find Defendant's appointment of Dillon, a non-resident of the city limits of McComb, Mississippi, null and void and in violation of and contrary to state law.

WHEREFORE, PREMISES FURTHER CONSIDERED, Plaintiff further prays that its application for Temporary Restraining Order be set for hearing at the earliest convenient date and that upon a hearing hereof, this Court issue its Temporary

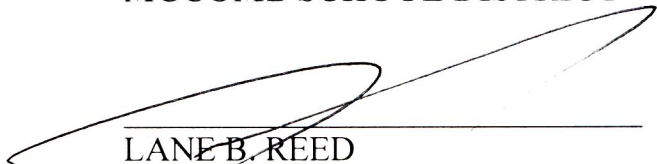
Restraining Order or Preliminary Injunction against Defendants halting Defendant's appointment of Dillon, a non-resident of the city limits of McComb, Mississippi, until a full and complete hearing on the merits may be held. Plaintiff further prays this Court grant such other and further appropriate relief, considering the circumstances and conditions surrounding this request for injunctive relief, as will be more fully shown upon a hearing in this cause. Plaintiff prays for general relief, etc.

Plaintiff doth further pray that all such orders and decrees as may be necessary in the premises may be entered and the Plaintiff have all such other relief both general and special as may be necessary in the premises or in equity may be met, and in duty bound Plaintiff ever prays, etc.

If mistaken in the relief prayed for, then Plaintiff prays for such other further and general relief as in the premises, it may be entitled to ask and receive. As in duty bound it ever prays, etc.

RESPECTFULLY SUBMITTED, this the 9th of May, 2022.

MCCOMB SCHOOL DISTRICT



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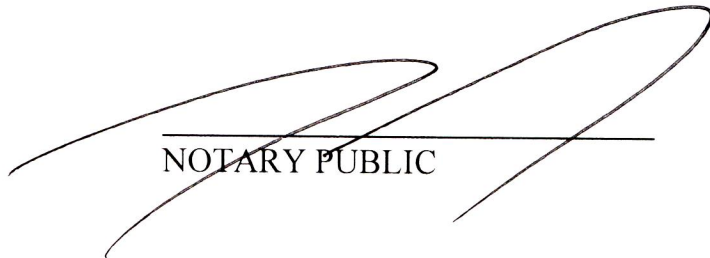
STATE OF MISSISSIPPI

COUNTY OF PIKE

Personally appeared before me, the undersigned authority in and for the said county and state, on this 9th day of May, ~~2019~~²⁰²² within my jurisdiction, the within named, **KIZZY R. CONEY**, who acknowledges that she is President of the McComb School District Board of Trustees, and that for and on behalf of the said Board of Trustees and as its act and deed she executed the above and foregoing instrument of writing on the date hereinabove written after first having been duly authorized by said Board of Trustees of the McComb School District, so to do.


KIZZY R. COONEY CONEY 

Sworn to and subscribed before me on this the 9th day of May, 2022.


NOTARY PUBLIC

My Commission Expires:



THOMSON REUTERS

WESTLAW Mississippi Attorney General Opinions

George L. Dorrill, Esquire

Office of the Attorney General
March 11, 1992

1992 WL 614661 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

*1 March 11, 1992

*1 George L. Dorrill, Esquire
*1 Attorney for Kosciusko School District
*1 Post Office Drawer 130
*1 Kosciusko, Mississippi 39090

Dear Mr. Dorrill:

*1 Attorney General Mike Moore has received your letter of request concerning the appointment/election of the trustees of the Kosciusko School District and has assigned it to me for research and reply. A copy of your letter is attached for reference.

*1 From your letter we understand that the Kosciusko School District is a municipal separate school district with added territory. You present six (6) questions involving the provisions of Mississippi Code Annotated § 37-7-203 (Revised 1990) (copy attached) which we will restate and respond to in sequence.

*1 QUESTION 1: The first paragraph of Section (1) of Section 37-7-203 provides that if the territory outside of the municipality ". . . furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the Board of Trustees of such school district shall be residents of the added territory outside the corporate limits."

*1 Does the phrase "not more than two" require that there be two trustees if more than 30% of the students come from outside the municipality or, since one is "not more than two," could the district continue to have only one trustee from outside the municipality?

*1 RESPONSE: In a prior opinion concerning the Kosciusko School District addressed to Honorable A.D. McBeath, dated September 9, 1987 we stated that where the added territory furnishes thirty percent (30%) or more of the pupils enrolled in the district it is not mandatory that two (2) members of the board of trustees be residents of the added territory. We stated that at least one (1) trustee must be a resident of the territory and opined that it is within the discretion of the municipal governing authorities whether to have two (2) members of the board of trustees elected from the added territory. However, this matter has been recently addressed by the U.S. District Court, Southern District, Mississippi in Crawford et al. v. City of Richton, Civil Action No. H89-0093 (W). The Court in interpreting Section 37-7-203 said:

*1 ". . . The statute contemplates times and circumstances where pupils from an added territory might number more than thirty percent (30%) of the total number of pupils enrolled in the school district, yet in the absence of exceptions found in the statute, the statute provides for a majority always to be appointed. In the event a municipal separate school district has no added territory, all five members of the board are appointed pursuant to the statute. Once a territory is added, that territory has no right to a board member until the territory furnishes fifteen percent (15%) or more of the pupils in the school district. A second member does not represent the added territory until thirty percent (30%) or more of the pupils reside there. . . ."

*2 The clear implication of the Court's statement is that when thirty percent (30%) or more of the pupils of the district reside in the added territory it becomes mandatory that two (2) trustees be elected from said territory. Therefore our opinion addressed to Honorable A.D. McBeath, dated September 9, 1987 is hereby modified to comply with the above cited and quoted case.

*2 QUESTION 2: In the event you construe the statute to authorize the territory outside of the corporate limits to have only one trustee even though more than 30% of the students come from outside the corporate limits, would the statute stand attack by the "one man-one vote" doctrine? (I believe it would be a fairly safe assumption that if 31% of the students come from outside of the corporate limits that approximately 31% of the total inhabitants of the school district live outside of the corporate limits. This 31%, however, only has 20% of the representation on the Board of Trustees.)

*2 RESPONSE: Our response to Question 1 renders this question moot. However, for your information, the Court in Crawford ruled that since the board in question is essentially appointive, the one man, one vote principle has no application.

*2 QUESTION 3: The first paragraph of Section (1) of Section 37-7-203 states that if 15% or more of the pupils enrolled in the district are from outside the added territory then at least one member of the Board of Trustees shall be a resident of the added territory and in the event 30% or more of the students enrolled in the schools of the district are from the added territory then not more that two members of the Board of Trustees shall be residents of the added territory outside the corporate limits.

*2 The statute is silent, however, as to whether the governing authorities of the municipality or the Board of Trustees of the school district have the authority to make such a decision, if such a decision is discretionary.



*2 If such a decision is discretionary, would the Board of Aldermen or the Board of Trustees have the authority to decide whether there would be one or two members of the board from outside of the municipality?

*2 RESPONSE: Our response to Question 1 expressing the opinion that it is mandatory that two (2) trustees be elected from the added territory when thirty percent (30%) or more of the pupils reside in said territory renders this question moot.

*2 QUESTION 4: The first paragraph of Section (1) of Section 37-7-203 states that each trustee shall be "chosen for a term of five (5) years, but the term of office of one (1) member shall expire each year."

*2 The fourth paragraph of Section (1) of Section 37-7-203 states that vacancies shall be filled for the unexpired terms.

*2 If the Board of Aldermen appointed someone from within the corporate limits the appointment would obviously be for the unexpired term of the resigning trustee.

*2 If the Board of Aldermen appointed a trustee from outside the municipality to succeed a trustee who served from outside the municipality the appointment would obviously be until the first Saturday of March, at which time an election would take place.

*3 The Kosciusko situation is unique, however, in that if a trustee is appointed from the added territory of the district by the Board of Aldermen the trustee would not be replacing a trustee from the territory outside of a municipality. This could be considered the creation of a new trustee ab initio.

*3 A trustee appointed from territory outside the municipality to fill a vacancy created by the resignation of a trustee from within the municipality would apparently serve only until the first Saturday in March following his appointment. At that time an election would be held.

*3 Would the winner of the election serve for the remainder of the unexpired term of the trustee within the municipality who had resigned, or would the trustee from the territory outside the municipality who is elected on the first Saturday of March serve a full five year term?

*3 RESPONSE: Section 37-7-203 provides in part:

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

*3 We note that the first Saturday of March, 1992 has passed. It is our opinion that the municipal governing authorities, in order to comply with our previously expressed opinion, may lawfully adopt an order or resolution providing that the office which is now vacant is an office to be filled by a qualified elector of the added territory. Said governing authorities may then proceed to appoint a qualified elector of the added territory who will serve until the first Saturday of March, 1993 at which time a person shall be elected for the remainder of the unexpired term.

*3 QUESTION 5: The third paragraph of Section (1) of Section 37-7-203 states that when part of a county school district is reconstituted into a separate municipal school district:

*3 "in the event the added territory of a municipal separate school district of a municipality furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then two (2) members of the Board of Trustees shall be residents of the added territory outside the corporate limits of such municipality and shall be elected from special trustee election districts by the qualified electors thereof as herein provided."

*3 You will notice that this paragraph states "two (2) members of the Board of Trustees shall be residents of the added territory" and not "not more than two (2) members of the Board of Trustees of such school district shall be residents of the added territory."

*3 Does the third paragraph of Section 37-7-203 only apply at the time that a county school district is reconstituted into a municipal separate school district with added territory, or would the third paragraph apply in perpetuity to such reconstituted school districts?

*4 The Kosciusko School District added the East Union, New Progress, Hesterville, Knox, Dossville, Springdale and Williamsville School Districts, or parts of these Districts, in 1953. All of these schools were county schools.

*4 RESPONSE: Please see the enclosed copy of an opinion addressed to Honorable J. Lonnie Smith, dated December 23, 1986. In summary, Smith states that when it becomes mandatory that two trustees of a municipal separate school district be elected from it added territory said change is subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended. It further states that if the U.S. Attorney General objects to the at-large elections and specifically requests that the trustees be elected from separate election districts within the added territory, it becomes the responsibility of the municipal governing authorities to apportion the added territory into two (2) districts.

*4 QUESTION 6: The third paragraph of Section (1) of Section 37-7-203 indicates that separate election districts for the trustees in the added territory are permitted if requested by the Attorney General.

*4 (a) If a decision is made to have two trustees from the territory outside of the municipality, can the local authorities establish separate election districts without the Attorney General making such a request?

*4 (b) If Section 37-7-203 does not require separate voting districts, would separate voting districts not be required in order to prevent diluting black voting strength, and to create a district with a black voting age majority?

*4 (c) If separate voting districts are preferred or required, would the Board of Aldermen or the Board of Trustees have the authority to establish the election district lines in the territory outside of the municipality?

*4 (It seems somewhat anomalous for aldermen of a municipality to be drawing district lines for a district outside of that municipality.)

*4 RESPONSE: As stated in our response to Question 5, a prerequisite to the municipal governing authorities creating separate trustee election districts is a request from the U.S. Attorney General. With respect to your several inquiries under Question 6, these questions primarily involve an interpretation of federal law (i.e. Section 2 of the Voting Rights Act of 1965). Under Mississippi Code Annotated § 7-5-25 (Supp. 1991) this office is unable to render official opinions involving the interpretation of federal law. We would point out that the decision of *Thornburg v. Gingles*, 478 U.S. 30 (1986) requires an intensely local appraisal of the particular facts involved before a determination can be made whether a particular election method results in a dilution of minority voting strength.

Sincerely,

*4 Mike Moore

*4 Attorney General

ATTACHMENT

*4 February 14, 1992

*4 Opinions Section

*4 Attorney General's Office

*4 P. O. Box 220

*4 Jackson, Mississippi 39205

*4 Re: Kosciusko School District

*4 Gentlemen:

*5 This firm represents the City of Kosciusko and the Kosciusko School District. The Kosciusko School District is a Municipal Separate School District.

*5 The Board of Aldermen of the City of Kosciusko has traditionally appointed four trustees to the Board of Trustees of the Kosciusko School District. The remaining trustee has been elected by that part of the district outside of the Kosciusko corporate limits.

*5 A trustee appointed by the Kosciusko Board of Aldermen has recently submitted her resignation from the Board of Trustees. This board member had approximately four years remaining on her term.

*5 The Board of Trustees and the Board of Aldermen have been advised that 31% of the students enrolled in the schools of the district live outside of the Kosciusko corporate limits. Additionally, approximately 37% of the ad valorem taxes paid to the district are paid on property outside the corporate limits of the City of Kosciusko.

*5 I would appreciate your reviewing Section 37-7-203 of the Mississippi Code and then giving me a formal ruling on the following questions:

*5 1. The first paragraph of Section (1) of Section 37-7-203 provides that if the territory outside of the municipality

*5 ". . . furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the Board of Trustees of such school district shall be residents of the added territory outside the corporate limits"

*5 Does the phrase "not more than two" require that there be two trustees if more than 30% of the students come from outside the municipality or, since one is "not more than two," could the district continue to have only one trustee from outside the municipality?

*5 2. In the event you construe the statute to authorize the territory outside of the corporate limits to have only one trustee even though more than 30% of the students come from outside the corporate limits, would the statute stand attack by the "one man - one vote" doctrine? (I believe it would be a fairly safe assumption that if 31% percent of the students come from outside of the corporate limits that approximately 31% of the total inhabitants of the school district live outside of the corporate limits. This 31%, however, only has 20% of the representation on the Board of Trustees.)

*5 3. The first paragraph of Section (1) of Section 37-7-203 states that if 15% or more of the pupils enrolled in the district are from outside the added territory then at least one member of the Board of Trustees shall be a resident of the added territory and in the event 30% or more of the students enrolled in the schools of the district are from the added territory then not more than two members of the Board of Trustees shall be residents of the added territory outside the corporate limits.

*5 The statute is silent, however, as to whether the governing authorities of the municipality or the Board of Trustees of the school district have the authority to make such a decision, if such a decision is discretionary.

*6 If such a decision is discretionary, would the Board of Aldermen or the Board of Trustees have the authority to decide whether there would be one or two members of the board from outside of the municipality?

*6 4. The first paragraph of Section (1) of Section 37-7-203 states that each trustee shall be "chosen for a term of five (5) years, but the term of office of one (1) member shall expire each year."

*6 The fourth paragraph of Section (1) of Section 37-7-203 states that vacancies shall be filled for the unexpired terms.

*6 If the Board of Aldermen appointed someone from within the corporate limits the appointment would obviously be for the unexpired term of the resigning trustee.

*6 If the Board of Aldermen appointed a trustee from outside the municipality to succeed a trustee who served from outside the municipality the appointment would obviously be until the first Saturday of March, at which time an election would take place.

*6 The Kosciusko situation is unique, however, in that if a trustee is appointed from the added territory of the district by the Board of Aldermen the trustee would not be replacing a trustee from the territory outside of a municipality. This could be considered the creation of a new trustee ab initio.

*6 A trustee appointed from territory outside the municipality to fill a vacancy created by the resignation of a trustee from within the municipality would apparently serve only until the first Saturday in March following his appointment. At that time an election would be held.

*6 Would the winner of the election serve for the remainder of the unexpired term of the trustee within the municipality who had resigned, or would the trustee from the territory outside the municipality who is elected on the first Saturday of March serve a full five year term?

*6 5. The third paragraph of Section (1) of Section 37-7-203 states that when part of a county school district is reconstituted into a separate municipal school district:

*6 "in the event the added territory of a municipal separate school district of a municipality furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then two (2) members of the Board of Trustees shall be residents of the added territory outside the corporate limits of such municipality and shall be elected from special trustee election districts by the qualified electors thereof as herein provided."

*6 You will notice that this paragraph states "two (2) members of the Board of Trustees shall be residents of the added territory" and not "not more than two (2) members of the Board of Trustees of such school district shall be residents of the added territory."

*6 Does the third paragraph of Section 37-7-203 only apply at the time that a county school district is reconstituted into a municipal separate school district with added territory, or would the third paragraph apply in perpetuity to such reconstituted school districts?

*6 The Kosciusko School District added the the East Union, New Progress, Hesterville, Knox, Dossville, Springdale and Williamsville School Districts, or parts of these Districts, in 1953. All of these schools were county schools.

*7 6. The third paragraph of Section (1) of Section 37-7-203 indicates that separate election districts for the trustees in the added territory are permitted if requested by the Attorney General.

*7 (a) If a decision is made to have two trustees from the territory outside of the municipality, can the local authorities establish separate election districts without the Attorney General making such a request?

*7 (b) If Section 37-7-203 does not require separate voting districts, would separate voting districts not be required in order to prevent diluting black voting strength, and to create a district with a black voting age majority?

*7 (c) If separate voting districts are preferred or required, would the Board of Aldermen or the Board of Trustees have the authority to establish the election district lines in the territory outside of the municipality?

*7 (It seems somewhat anomalous for aldermen of a municipality to be drawing district lines for a district outside of that municipality.)

*7 Two candidates announced for the existing position of trustee that is elected from the territory outside of the corporate limits. One of those candidates then withdrew from the election, and the remaining candidate has been declared elected without opposition pursuant to Section 37-7-211. She cannot begin to serve as a trustee, however, until such time as she has completed the training course required by Section 37-7-306.

*7 Additionally, the Board of Aldermen will not attempt to replace the trustee that has resigned until such time as the Board receives your official opinion in response to the above questions.

*7 In the meantime, the Kosciusko School District will be serving with only three trustees. We would, therefore, appreciate your expediting your response to this letter to the extent possible in order that these matters can be addressed by the proper local authorities.
Very truly yours,

*7 George L. Dorrill

1992 WL 614661 (Miss.A.G.)

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Program Location:

[REDACTED]

AM Bus Number:

AM Bus Route:

[REDACTED] le

PM Bus Number:

PM Bus Route:

Summit Holmesville
Rd & Butler Rd
Summit Holmesville
Rd & Butler Rd

Bus Stop:

[REDACTED]

NO

YES

YES

[REDACTED]

Occupation:
Home Phone:
Work Phone:
Cell Phone:
E-Mail:

Dillon, Evelle Mother
Thomas

RESIDES WITH
EMERGENCY CONTACT
CHECK IN/OUT

Address: 1035 Summit
Holmesville Rd
McComb, MS 39648-8603

Occupation:
Home Phone:
Work Phone:
Cell Phone:
E-Mail:

