



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

December 22, 2022

Ms. DeBorah Armstrong  
Trustee, North Panola School Board  
2180 Pleasant Grove Road  
Sardis, Mississippi 38666

Re: Residency of a School Board Trustee

Dear Ms. Armstrong:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

The North Panola School District Board of Trustees (“School Board”) is a consolidated school district composed of five members serving staggered five-year terms. Miss. Code Ann. § 37-7-207. In order for a person to be eligible to hold the office of trustee of any school district, such person must be a bona fide resident and a qualified elector of such school district. Miss. Code Ann. § 37-7-201.

### **Questions Presented**

1. What are the procedures and whose responsibility is it to request the removal of a board member living outside of his/her district and county?
2. Are the actions, decisions, and recommendations carried out with such a board member legal and binding?

### **Brief Response**

1. Whether an official has “removed” out of the jurisdiction for which he or she was elected or appointed, thereby creating a vacancy, is a question of fact that must be determined by the School Board. The School Board of a consolidated school district is authorized to fill a vacancy by appointment.
2. If the School Board determines that the member in question was not lawfully entitled or qualified to hold his position, the member would have acted as a *de facto* officer, and actions of a *de facto* officer are valid.

### **Applicable Law and Discussion**

In your request, you asked several questions that are outside the scope of an official Attorney General's opinion. These questions are mixed questions of law and fact, and it is beyond the scope of an official opinion to attempt to guide the School Board or its individual members on what actions to take. *See* MS AG Op., *Lee* at \*4 (Aug. 6, 2021). Accordingly, we will only respond to your questions that are within the scope of an Attorney General's official opinion.

We understand your first question to ask who has the authority to determine whether a School Board member has removed himself and thus, vacated his office. Section 37-7-201 states that in order to be eligible to hold the office of any school board trustee, "such person must be a bona fide resident and a qualified elector of such school district. . . ." Additionally, Section 25-1-59 provides that if any county officer "removes" out of the district or county for which they were elected or appointed during the term of their office, then their office shall become vacant. Our office has previously opined that whether a school board member has "removed" out of the jurisdiction from which he was appointed or elected during the term of his office, thereby vacating his office pursuant to Section 25-1-59, is a factual determination. MS AG Op., *Seals* at \*1 (June 13, 2008). Once residency has been established, it "continues until removal to another locality with intent to remain there and abandonment of the old domicile without intent to return." MS AG Op., *Thomas* at \*1 (Mar. 29, 2019) (citing *Hubbard v. McKey*, 193 So. 2d 129 (Miss. 1966)). Further, our office concluded that the entity with the statutory authority to fill a vacancy on a school board also has the authority to determine if a vacancy exists. *Seals* at \*2. Section 37-7-207 authorizes a school board of a consolidated school district to fill a vacancy by appointment. Therefore, the School Board has the authority to determine if the School Board member has "removed" out of the school district for which he was elected or appointed, thereby vacating his office. However, before making any determination, the School Board must provide the School Board member adequate due process.

In response to your second question regarding the validity of actions taken by a School Board member, Section 25-1-37 states, "[t]he official acts of any person in possession of a public office and exercising the functions thereof shall be valid and binding as official acts in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold the office or not and whether such person be lawfully qualified or not." If the School Board finds that the member in question was not lawfully entitled or qualified to hold his position, the member would have acted as a *de facto* officer and the acts of a *de facto* officer are valid. *See* MS AG Op., *Clark* (Aug. 13, 2019); MS AG Op., *Faulks* (Nov. 28, 2017).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard  
Special Assistant Attorney General