

**OPINION NO. 77-042****Syllabus:**

The provisions of Am. H.B. 1207 are prospective and do not affect vacancies in boards of education that were filled prior to August 31, 1976. Persons appointed prior to August 31, 1976 to boards of education shall fill such vacancies for the unexpired term as provided by R.C. 3313.11 prior to amendment by Am. H.B. No. 1207, effective Aug. 31, 1976.

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**To: Ted W. Brown, Secretary of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, August 3, 1977**

You have requested my opinion concerning Am. H.B. No. 1207, effective Aug. 31, 1976, as it affects the procedure of filling vacancies in boards of education which had previously been governed by R.C. 3313.11. The Section as amended requires an election for an unexpired term in certain circumstances. I understand that your primary concern is as follows:

". . .whether this section as amended applies to vacancies on boards of education that were filled prior to August 31, 1976, so as to require a special election for the unexpired term where applicable or whether persons appointed to fill such vacancies prior to that date will hold such offices for the entire unexpired term."

Before it was amended, R.C. 3313.11 read, in part, as follows:

" . . . Any such vacancy shall be filled by the board at its next regular or special meeting, not earlier than ten days after such vacancy occurs. A majority vote of all the remaining members of the board may fill any such vacancy for the unexpired term."  
(Emphasis added.)

One of my predecessors, in 1961 Op. Att'y Gen. No. 2439, page 444, examined Section 3313.11 as a special exception to the general provisions of R.C. 3.02 which deals with the term to be served by an appointee to an elective office. R.C. 3.02 reads in pertinent part:

"When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, . . . ."

In deciding that R.C. 3.02 did not apply to the filling of vacancies in boards of education, my predecessor, in 1961 Op. Att'y Gen. No. 2439, page 444, relied upon the general principle of statutory construction that special statutes control over general statutes when both govern the same subject matter. It was the apparent intent of the General Assembly to change the length of time to be served by an appointee to a board of education by their enactment of Am. H.B. 1207, effective Aug. 31, 1976. Under the provisions of the bill, an appointee selected by the board or the probate court would hold office for the shorter of the following periods of time: (1) the remainder of the unexpired term, or (2) until January 1 following the next general election, at which board of education members would regularly be elected, provided the election is to take place more than 90 days after a successor is selected by the board or probate court.

In specific response to your concern, I can find no language in Am. H.B. 1207 which would make the provisions of the bill retroactive. An accepted rule of statutory construction, which has been codified in R.C. 1.48, reads as follows:

"A statute is presumed to be prospective in its operation unless expressly made retrospective."

In view of the foregoing, therefore, it is my opinion and you are so advised that the provisions of Am. H.B. 1207 are prospective and do not affect vacancies in boards of education that were filled prior to August 31, 1976. Persons appointed prior to August 31, 1976 to boards of education shall fill such vacancies for the unexpired term as provided by R.C. 3313.11 prior to amendment by Am. H.B. No. 1207, effective Aug. 31, 1976.