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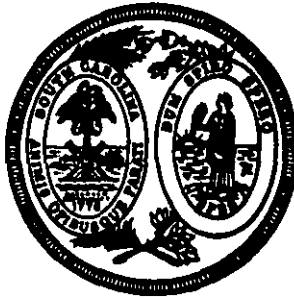
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**REGISTRATION
AND
ELECTION LAWS
OF
SOUTH CAROLINA
1986**

**Carrying Statutes Through the 1986 Session of the
General Assembly**



**STATE ELECTION COMMISSION
P.O. Box 5987, Columbia, S.C. 29250**

COMMISSIONERS

C. TYRONE GILMORE, *Chairman*

SYLVIA SCHWARTZ

NEAL D. THIGPEN

MARGARET S. TOWNSEND

C. D. SEXTON

JAMES B. ELLISOR

Executive Director

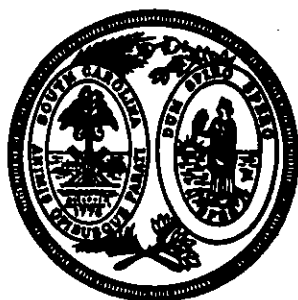
**Material in this book taken from the Code of Laws of South
Carolina, 1976, 1985 cumulative Supplement and 1986 Acts of the
General Assembly.**

**"Not an official version of the Code of Laws
of South Carolina, 1976."**

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SOUTH CAROLINA ELECTION COMMISSION MEMBERS

Appointed by the Governor

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Spartanburg, S.C.

SYLVIA SCHWARTZ (1988)
Aiken, S.C.

NEAL D. THIGPEN (1986)
Florence, S.C.

MARGARET S. TOWNSEND (1986)
Charleston, S.C.

C. D. SEXTON (1986)
Columbia, S.C.

STAFF

JAMES B. ELLISOR
Executive Director

JAMES F. HENDRIX
Assistant Director
Staff Development and Training

CONWAY BELANGIA
Public Information Officer

NANCY FOSTER
Administrative Specialist C

BLONDELL M. MONTAGUE
Data Coordinator II

BARBARA GIBSON
Accounting Technician II

WANDA Q. MILLS
Data Entry Supervisor I

JOYCE D. BENJAMIN
Data Entry Operator II

EMMIT DOUGLAS RILEY
Postal Clerk

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Senior Accountant

MARCIA ANDINO
Programmer-Analyst

DONNA GIUGLIANO
Executive Support Specialist

FAYE L. CARTER
Administrative Assistant I

DONNA RUMPH
Administrative Specialist A

KATHLEEN PATTERSON
Administrative Specialist A

KAREN HODGES
Data Entry Operator II

C. STANLEY HARRIS
Postal Center Supervisor

**** A special thanks to Treva Ashworth, Assistant Attorney General, and Cathy Clark for their tremendous help to bring this volume up to date with recent changes and additions in statistics, court rulings, and official opinions.**

TITLE 2

GENERAL ASSEMBLY

CHAPTER 1

General Provisions

Sec.

- 2-1-20. Election date of members of House.
- 2-1-30. Each House office shall be separate and distinct; candidate must qualify for one specific office.
- 2-1-40. Candidate must be resident of district; terms of office.
- 2-1-60. Apportionment of members of Senate effective with 1972 elections; alternate plans; each Senate office shall be separate and distinct; candidate must qualify for one specific office.

§ 2-1-20. Election date of members of House.

Representatives to the House of Representatives shall be elected from the several counties of the State at the general election to be held on Tuesday after the first Monday in November of every even-numbered year.

HISTORY: 1962 Code § 30-2; 1952 Code § 30-2; 1942 Code § 2052; 1932 Code § 2052; Civ. C. '22 § 14; Civ. C. '12 § 14; Civ. C. '02 § 12; G. S. 11; R. S. 11; 1901 (23) 611; 1902 (23) 1197; 1908 (25) 1283; 1910 (26) 867; 1911 (27) 68; 1912 (27) 827; 1916 (29) 717; 1918 (30) 881; 1919 (31) 5; 1922 (32) 922; 1932 (37) 1111.

Cross references—

- As to election of representatives, see SC Const, Art 3, § 8.
- As to conduct of elections, generally, see §§ 7-13-10 et seq.

Research and Practice References—

- 72 Am Jur 2d, States, Territories, and Dependencies § 44.
- 81 CJS, States § 49.

CASE NOTES

Since Code 1976 § 14-1-50 preserves common law of England in South Carolina, legislative immunity is fully applicable to actions brought in any federal or state court of South Carolina alleging causes of action arising out of constitutions or statutes of United States or South Carolina. *Bruce v Riddle* (1979, DC SC) 464 F Supp 745.

§ 2-1-30. Each House office shall be separate and distinct; candidate must qualify for one specific office.

Each House office in this State shall constitute a separate and distinct office to which a separate number shall be assigned within each election district for such an office. A candidate for such an office shall be required to qualify for a specific office and shall not be permitted to qualify for more than one such office in any one election.

The election ballots for House offices shall reflect the number assigned to each office and the names of the candidates.

HISTORY: 1962 Code § 30-2.1; 1972 (57) 2384.

Cross references—

As to qualification of members of the House, see SC Const, Art 3, § 7.

§ 2-1-40. Candidate must be resident of district; terms of office.

Any person otherwise qualified by law and the Constitution of this State may file as a candidate and can be elected only in the district in which he is a resident. A person may file for only one House office. Terms of office shall be for two years.

HISTORY: 1962 Code § 30-2.2; 1974 (58) 2124.

Cross references—

As to qualification for office and terms of members of House, see SC Const, Art 3, § 7.

As to qualification for office, generally, see SC Const, Art 17, §§ 1 to 1B.

Research and Practice References—

72 Am Jur 2d, States, Territories, and Dependencies § 44.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 52 (petition or application to require omission of name of ineligible candidate from ballot).

§2-1-60. Apportionment of members of Senate effective with the 1984 elections; each Senate office shall be separate and distinct; candidate must qualify for one specific office.

Effective with the 1984 elections, the State of South Carolina is divided into the following senatorial districts from which one senator shall be elected:

NOTE: See 1976 Code of Laws of South Carolina as amended for definition of districts.

Each Senate office shall constitute a separate and distinct office to which a separate number shall be assigned. A candidate for the office of Senator must be a legal resident of the district in which he is a candidate.

The election ballots for the office of Senator in each district shall reflect the number assigned to each Senate office and the names of the candidates for each.

CASE NOTES

United States Attorney General's failure to object to proposed change in voting laws submitted for his preclearance review under § 5 of Voting Rights Act of 1965 (42 USCS § 1793c) is not conclusive with respect to constitutionality of submitted state legislation; similarly objection by Attorney General is not conclusive with respect to invalidity of submitted state legislation. *Morris v Gressette*. 432 US 491, 53 L 3d 2d 506, 97 S Ct 2411. (1977)

South Carolina is free to implement its reapportionment plan for state senate, having submitted statutory plan to United States Attorney General for preclearance under § 5 of Voting Rights Act of 1965 (42 USCS 1973c), and Attorney General, within 60-day period specified for his ac-

tions, having notified state that he would not object to plan because Federal District Court had upheld constitutionality of plan. *Morris v Gressette* 432 US 491, 53 L Ed 2d 506, 97 S Ct 2411. (1977).

Objection to reapportionment plan by United States Attorney General more than 1 year after submission of plan to him, Federal District Court having ordered him to make independent determination of plan's validity under § 5 of Voting Rights Act of 1965 (42 USCS § 1793c), is invalid since Attorney General's failure to interpose timely objection under § 5 is not subject to judicial review, *Morris v Gressette* 432 US 491, 53 L Ed 2d 506, 97 S Ct 2411. (1977)

HISTORY: 1983 (63) 1333

Cross references—

As to when apportionment takes effect, see SC Const., Art 3 § 9.

Research and Practice References—

26 Am Jur 2d, Election §§ 26 et seq.

TITLE 5

MUNICIPAL CORPORATIONS

CHAPTER 15

Nominations and Elections for Municipal Offices

Sec.

5-15-50. Establishment of municipal lines and time for general and special elections; public notice of elections.

§ 5-15-50. Establishment of municipal lines and time for general and special elections; public notice of elections.

Each municipal governing body may by ordinance establish municipal ward lines and the time for general and special elections within the municipality. Public notice of the elections shall be given at least sixty days prior to such elections.

HISTORY: 1962 Code § 47-93; 1975 (59) 692; 1978 (61) 1539.

Research and Practice References—

62 CJS, Municipal Corporations §§ 81, 82.

ATTORNEY GENERAL'S OPINIONS

Under §7-7-10 and §5-15-50, South Carolina Code of Laws, 1976, the General Assembly is the only authority which should draw ward lines for voting purposes; municipalities can draw ward lines pursuant to §5-15-50. South Carolina Code of Laws, 1976, for other than election pur-

poses; if the General Assembly fails to designate a voting place another authority may designate the voting place; municipalities can not be able to pool all the precincts in municipality for municipal election. 1978 Op Att'y Gen. No 78-70, p 99.

TITLE 6
LOCAL GOVERNMENT—PROVISIONS APPLI-
CABLE TO SPECIAL PURPOSE DISTRICTS
AND OTHER POLITICAL
SUBDIVISIONS

CHAPTER 11

Special Purpose or Public Service Districts Generally.

ARTICLE 1

GENERAL PROVISIONS

SEC.

6-11-70. Establishment of uniform date for election of members of governing body of special purpose district.

§ 6-11-70. Establishment of uniform date for election of members of governing body of special purpose district.

Notwithstanding any other provision of law the governing body of any county may by ordinance or resolution establish a uniform election date for the election of members of the governing bodies of any special purpose districts within the county. To implement the provisions of this section, such ordinances or resolutions may include provisions to extend terms, for periods not to exceed one year, of persons to be elected to permit such persons to be elected on the uniform election date, but no elected term shall be shortened for that purpose.

HISTORY: 1975 (59) 331.

TITLE 7

ELECTIONS

| CHAPTER | SECTION |
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| 1. General Provisions | 7-1-10 |
| 3. State Election Commission; Central Registration System | 7-3-10 |
| 5. Qualifications and Registration of Electors | 7-5-10 |
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| 11. Designation and Nomination of Candidates | 7-11-10 |
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| 17. Canvass of Vote; Certificates and Records of Results | 7-17-10 |
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| 21. Special Provisions Applicable to Election of State Senators and Members of House of Representatives | 7-21-10 |
| 23. Election Expenses | 7-23-10 |
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CHAPTER 1

General Provisions

Sec.

- 7-1-10. Short title.
- 7-1-20. Definitions.
- 7-1-30. Receipt of public aid does not disfranchise any citizen.
- 7-1-40. Title applicable to all elections.
- 7-1-50. Contesting election of Governor.
- 7-1-60. Each multiple office is separate and distinct; candidate is to qualify for one specific office; ballots for multiple offices.
- 7-1-70. Catawba Indians, if otherwise qualified, are citizens.
- 7-1-80. Liability of broadcasting station for defamatory statement by candidate.

§ 7-1-10. Short title.

This Title shall be known as the "South Carolina Election Law."

HISTORY: 1962 Code § 23-1; 1952 Code § 23-1; 1950 (46) 2059.

Cross references—

- As to constitutional provision for free and open elections, see SC Const, Art 1, § 5.
- As to campaign practices, see §§ 8-13-610 to 8-13-630.

§ 7-1-20. Definitions.

The following words and phrases used herein, unless the same be plainly inconsistent with the context, shall be construed as follows:

(1) "*General election*" means the election provided herein to be held for the election of officers to the regular terms of office provided by law, whether State, United States, county, municipal or of any other political subdivision of the State, and for voting on constitutional amendments proposed by the General Assembly;

(2) "*Special election*" means any other election including any referendum provided by law to be held under the provisions of law applicable to general elections;

(3) "*Primary*" means a party primary election held by a political party under the provisions of this Title;

(4) "*Inhabitants*" means the number of inhabitants according to the Federal census last taken;

(5) "*Electoral board*" means the board or other authority empowered to hold a general or special election;

(6) A "*voting or polling precinct*" shall mean an area created by the legislature for convenient localization of polling places and which shall be administered and votes counted therein as a local unit in all elections;

A "*voting place*" shall be any place within a voting or polling precinct wherein ballots may be cast.

(7) "*Political party*" means a political party, organization or association certified as such by the State Election Commission in the manner provided for in this Title;

(8) "*State committee*" means the State executive committee of a political party;

(9) "*State chairman*" means the chairman of the State executive committee of a political party;

(10) "*County committee*" means the county executive committee of a political party;

(11) "*County chairman*" means the chairman of the county executive committee of a political party;

(12) "*Club district*" means the territory of the general election voting place or precinct in which the political party club is formed under this Title, whether a ward or township or a subdivision thereof;

(13) "*Booth*" includes a voting machine booth, curtain or enclosure; and

(14) "Legal holiday" means any holiday recognized by the State or Federal law.

(15) 'Voter', 'Registered voter', 'Elector', 'Registered elector', 'Qualified elector', or 'Qualified registered elector' means any person whose name is contained on the active roster of voters maintained by the State Election Commission and whose name has not been removed from the roster for any of the reasons named in items (2) and (3) of subsection (C) of Section 7-3-20 and who possesses a valid registration certificate.

HISTORY: 1962 Code §23-2; 1952 Code §23-2; 1950 (46) 2059; 1967 (55) 634; 1984 Act. No. 264.

ATTORNEY GENERAL'S OPINIONS

Under §7-7-10 and §5-15-50, South Carolina Code of Laws, 1976, the General Assembly is the only authority which should draw ward lines for voting purposes; municipalities can draw ward lines pursuant to §5-15-50, South Carolina Code of Laws, 1976, for other than election purposes; if the General Assembly fails to designate a voting place another authority may designate the voting place; muni-

icipalities can not be able to pool all the precincts in municipality for municipal election. 1978 Op Att'y Gen, No 78-70, p 99.

Petition signatures of persons who were deleted from the registration rolls before the petitions were circulated because of their voting records may not be counted. Op. Atty. Gen. to Mr. Melvin B. McKeown, Jr., Aug. 21, 1980.

§ 7-1-30. Receipt of public aid does not disfranchise any citizen.

Nothing in this Title shall disfranchise any citizen, if otherwise qualified, who may receive any public aid from the State or Federal Government through the Department of Social Services or any other State or Federal agency.

HISTORY: 1962 Code § 23-3; 1952 Code § 23-3; 1950 (46) 2059.

Cross references—

As to protection of right of suffrage, see SC Const. Art 2.

§ 7-1-40. Title applicable to all elections.

This Title shall apply to and control all elections, including elections for the issuance of bonds and other elections in which any question or issue is submitted to a vote of the people.

HISTORY: 1962 Code § 23-4; 1952 Code § 23-4; 1950 (46) 2059, 2355.

§ 7-1-50. Contesting election of Governor.

In case of a contest of the election of Governor, if the General Assembly by concurrent resolution shall entertain the same, the Senate and House of Representatives shall, each separately, proceed to hear and determine the facts in the case, so far as they deem necessary, and decide thereon who is entitled to be declared

elected. If the two branches of the General Assembly come to the same decision, they shall, by concurrent resolution, declare who is duly elected and entitled to enter upon and exercise the office of Governor; and such person thereupon shall, upon taking the oath prescribed in the Constitution, be inducted into office. If the two branches of the General Assembly do not come to the same decision, then an election shall be called by the Governor, to take place in not less than sixty nor more than ninety days, at which the qualified electors shall proceed to vote for a suitable person to fill the office of Governor.

HISTORY: 1962 Code § 23-5; 1952 Code § 23-5; 1942 Code § 2324; 1932 Code § 2324; Civ. C. '22 § 258; Civ. C. '12 § 256; Civ. C. '02 § 250; G. S. 194; R. S. 188; 1882 (17) 1121; Const, Art 4 § 4; 1961 (52) 48.

Cross references—

As to constitutional oath of office, see SC Const, Art 3, § 26.

As to constitutional provision regarding election contests, see SC Const, Art 2, § 10.

As to constitutional provision that person who has highest number of votes is to be governor, see SC Const, Art 4, § 5.

§ 7-1-60. Each multiple office is separate and distinct; candidate is to qualify for one specific office; ballots for multiple offices.

Each multiple office in this State shall constitute a separate and distinct office to which a separate number shall be assigned within each election district for such an office. A candidate for such an office shall be required to qualify for a specific office and shall not be permitted to qualify for more than one such office in any one election.

The election ballots for multiple offices shall reflect the number assigned to each office and the names of the candidates.

HISTORY: 1962 Code § 23-5.1; 1972 (57) 2383.

Cross references—

As to similar provisions as to House of Representatives offices, see § 2-1-30.

As to similar provisions as to Senate offices, see § 2-1-60.

§ 7-1-70. Catawba Indians, if otherwise qualified, are citizens.

All Catawba Indians, otherwise qualified, are hereby declared to be citizens of the State of South Carolina and shall enjoy and have all the rights and privileges belonging to other citizens of the State.

HISTORY: 1962 Code § 23-6; 1952 Code § 23-6; 1944 (43) 1208.

§ 7-1-80. Liability of broadcasting station for defamatory statement by candidate.

The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations and the agents or employees of any such owner, licensee or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast by a candidate for political office in those instances where, under the acts of Congress or the rules and regulations of the Federal Communications Commission, the broadcasting station or network of stations, is prohibited from censoring the material broadcast by such candidate, provided the owner, licensee, or operator shall cause to be made at the conclusion of the broadcast the following announcement in substance; "The broadcast you have just heard was not censored in accord with the immunity from censorship extended legally qualified political candidates."

HISTORY: 1962 Code § 23-7; 1952 (47) 1939.

Research and Practice References—

50 Am Jur 2d, Libel and Slander §§ 343, 344.

ATTORNEY GENERAL'S OPINIONS

"Candidate for political office". — "Candidate for political office" as used in this section [Code 1962 § 23-7] means the same as "candidate for public office" as used in Code 1962 § 24-552. 1963-64 Ops. Att'y Gen., No. 1727, p. 212.

Exemptions from liability extend to

primary candidates.—The exemptions from liability provided broadcasting stations by this section [Code 1962 § 23-7] are commonly and without question extended to primary candidates. 1963-64 Ops. Att'y Gen., No. 1727, p. 212.

CHAPTER 3

State Election Commission; Central Registration System

SEC.

- 7-3-10. State Election Commission created; appointment; term; composition; vacancies; chairman; meetings; powers and duties.
- 7-3-20. Executive director of State Election Commission.
- 7-3-30. Notice of deletion of elector's name from roster of electors; appeal by elector; restoration of name.
- 7-3-40. Reports to be furnished by Bureau of Vital Statistics.
- 7-3-50. Duplicate certificates and other information to be furnished by county boards of registration.
- 7-3-60. Clerks and magistrates shall report persons convicted of certain offenses.

§ 7-3-10. State Election Commission created; appointment; term; composition; vacancies; chairman; meetings; powers and duties.

(a) There is hereby created the State Election Commission composed of five members, at least one of whom shall be a member of the majority political party represented in the General Assembly and at least one of whom shall be a member of the largest minority political party represented in the General Assembly, to be appointed by the Governor to serve terms of four years and until their successors have been elected and qualify, except of those first appointed three shall serve for terms of two years. Any vacancy on the Commission shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(b) The Governor shall appoint one of the members to serve as chairman for a term of two years and until his successor has been appointed and qualifies. The Commission shall select such other officers from among its members as it may deem necessary.

(c) The Commission shall meet at its offices in Columbia at least once each month at such times as it may determine.

(d) The Commission shall have the powers and duties as enumerated in this title.

HISTORY: 1968 Code § 29-90; 1969 (58) 2916.

Research and Practice References—

25 Am Jur 2d, Elections §§ 99 et seq.

29 CJS, Elections §§ 5 et seq.

CASE NOTES

Stated in *Brisben v Thornton*, 258 SC 524, 189 SE2d 827 (1972).

ATTORNEY GENERAL'S OPINIONS

The Home Rule Act of 1975 [Chapter 9 of Title 4 and Chapters 1, 5, 7, 9, 11, 13, 15 and 17 of Title 5 of the 1976 Code] does not change the functioning

or structure of the Commissioners of Elections. Terms of Commissioners end on date of General Election. 1974-75 Op Att'y Gen, No 4196, p 246.

§ 7-3-20. Executive director of State Election Commission.

(A) The State Election Commission shall elect an executive director who shall be directly responsible to the Commission and who shall serve at the pleasure of the Commission. The executive director shall be the chief administrative officer for the State Election Commission.

(B) The executive director shall receive such compensation and employ such staff, subject to the approval of the State Election Commission, as may be provided by law.

(C) The executive director shall:

(1) Maintain a complete roster of all qualified electors by county and by precincts;

(2) Delete the name of any elector (a) who is deceased, (b) who is no longer qualified to vote in the precinct where currently registered, (c) who has been convicted of a disqualifying crime, or (d) who is otherwise no longer qualified to vote as may be provided by law;

(3) For the purpose of removing from the roster the names of electors who are presumed to be no longer qualified to vote in the precinct where registered, delete the name of any elector who has failed to vote in each of two consecutive State-wide general elections and also failed to vote in any other election which might have been held in the precinct in which he is registered within the period of time intervening between the two general elections;

(4) Enter names on the various rosters as they are reported by the county registration boards;

(5) Furnish each county registration board with a master list of all registered voters in the county, together with three copies of all registered voters in each precinct of the county, at least ten days prior to each election. The precinct copies shall be used as the official list of voters;

(6) Maintain all information furnished his office relating to the inclusion or deletion of names from the rosters for four years;

(7) Purchase, lease or contract for the use of such equipment as may be necessary to properly execute the duties of his office, subject to the approval of the State Election Commission;

(8) Secure from the United States courts in South Carolina and Federal agencies available information as to persons convicted of disqualifying crimes;

(9) Obtain information from any other source which may assist him in carrying out the purposes of this section;

(10) Perform such other duties relating to elections as may be assigned him by the State Election Commission; and

(11) Furnish at reasonable price any and all precinct lists to any qualified elector requesting same.

HISTORY: 1962 Code § 23-31; 1967 (55) 657; 1968 (55) 2316.

Related Local Laws—

For local laws concerning rosters of qualified electors in Dillon and Spartanburg counties, see Local Law Index.

CASE NOTES

This section is explicit, admitting of no construction or application other than that which it clearly demands. *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (1976).

Section requires that the executive director of the Election Commission furnish "any and all precinct lists" to any qualified electors. *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (1976).

This section states without equivocation that "any and all precinct lists" are to be supplied upon payment of a reasonable charge. *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (1976).

Requirement includes furnishing of computer tape containing precinct list of qualified electors. — Apparently, the legislature favored the right of every qualified voter to secure a copy of the computer tape of precinct electors, which admittedly could be used for "legitimate purposes," to be more

important than potential misuses of the tape by commercial exploitation. *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (1976).

If a computer tape containing a precinct list of qualified electors was to be excluded from "any and all precinct lists," the legislature would have so provided. *Martin v. Ellisor*, 266 S.C. 377, 223 S.E.2d 415 (1976).

Applied in *Brisben v Thornton*, 258 SC 524, 189 SE2d 827 (1972).

ATTORNEY GENERAL'S OPINIONS

The State Election Commission is not required to provide a computer list of voters free of charge to a political party for an election that is not authorized by law, such as a Presidential preference election. Op. Atty. Gen. to Mr. James B. Ellisor, Oct. 1, 1979.

The fact that a conviction from a disqualifying offense has been appealed does not stay the executive director's action in deleting that elector's name from the list of qualified electors. Op. Atty. Gen. to Mr.

James B. Ellisor, Feb. 22, 1982.

An elector who has been convicted but not yet sentenced by a federal court should be permitted to vote. Op. Atty. Gen. to a Congressman, Nov. 3, 1980.

Petition signatures of persons who were deleted from the registration rolls before the petitions were circulated because of their voting records may not be counted. Op. Atty. Gen. to Mr. Melvin B. McKeown, Jr., Aug. 21, 1980.

§ 7-3-30. Notice of deletion of elector's name from roster of electors; appeal by elector; restoration of name.

(a) The executive director shall notify by mail each elector at the address last filed in the office, whose name has been deleted. The notice shall state the reason for the deletion and inform the elector of his right to appeal to the county board of registration and the time in which to perfect such appeal. A copy of such notice shall be forwarded to the appropriate county board of registration.

(b) Each elector whose name has been deleted shall have twenty days from the date such notice is mailed in which to appeal. The appeal shall be to the county board of registration from whose roster the deletion has been made. If the board determines that the elector's name should not have been deleted, it shall instruct the central registration office to restore his name to the registration books; *provided, however*, that if the elector's name has been deleted solely by reason of his failure to vote as provided in § 7-3-20 (C) (3), his name shall be restored as a matter of course to the registration books upon his request if he shall be otherwise qualified.

HISTORY: 1962 Code § 23-32; 1967 (55) 657; 1968 (55) 2316.

CASE NOTES

Applied in *Brisben v Thornton*, 258 SC 524, 189 SE2d 827 (1972).

ATTORNEY GENERAL'S OPINIONS

Third party may not apply for reinstatement. — A person who has been deleted from the list of registered voters should make a personal request for reinstatement to the registration board. Heresy information from a third party that the deleted person desires to be reinstated would be insufficient. Op. Att'y Gen. to Ms. Minnie G. Johnson, Nov. 5, 1979.

§ 7-3-40. Reports to be furnished by Bureau of Vital Statistics.

The Bureau of Vital Statistics shall furnish the executive director a monthly report of all persons age twenty-one or over who have died in the State since making the previous report. The initial report shall be made within sixty days after June 29, 1967. All such reports shall contain the name of the deceased, county of residence, his social security or other identification number, and his date and place of birth. The Bureau shall provide that this information be furnished to it by the various counties.

HISTORY: 1962 Code § 23-33; 1967 (55) 657; 1968 (55) 2316.

§7-3-50 Information to be furnished by county boards of registration.

Each county board of registration must furnish the executive director information as may be requested by him concerning each registered elector by the fifteenth day of each month and within five days after closing of the books prior to an election."

HISTORY: 1962 Code § 23-34; 1967 (55) 657; 1968 (55) 2316; 1984 Act. No. 510.

§7-3-60. Clerks and magistrates shall report persons convicted of certain offenses.

The clerks of the courts of common pleas and general sessions and every magistrate in the State must, annually on or before June first, make out under their respective hands and seals and report to the executive director a complete list as shown by the records of their respective offices for the preceding calendar year of all persons convicted in that year of felonies or crimes against the election laws, together with the social security or identification numbers of these persons and the month of conviction. Where there is no person to be reported, the report shall so state. Any clerk of the court or magistrate who fails or neglects to make any report required by this section must forfeit and pay to the county in which he holds office the sum of fifty dollars for each failure or neglect to make the report.

HISTORY: 1962 Code § 23-92; 1952 Code § 23-92; 1950 (46) 2059; 1967 (55) 657; 1968 (55) 2316; 1984 Act. No. 289

Research and Practice References—

25 Am Jur 2d, Elections § 94.
29 CJS, Elections § 33.

CHAPTER 5

Qualifications and Registration of Electors

- ARTICLE 1.** County Boards of Registration.
ARTICLE 3. Requirement of and Qualifications for Registration.
ARTICLE 5. Registration Books, Lists of Electors and the Like.
ARTICLE 7. Special Provisions for Municipal Elections.

ARTICLE I

COUNTY BOARDS OF REGISTRATION

SEC.

- 7-5-10. Appointment and removal of members of boards of registration.
7-5-20. Deputy members of boards of registration.
7-5-30. Duties of boards of registration; term of office of members; quorum; vacancies.
7-5-40. Supplements to counties to help defray expenses of registration office.

§ 7-5-10. Appointment and removal of members of boards of registration.

Between the first day of January and the fifteenth day of March in every even-numbered year the Governor shall appoint, by and with the advice and consent of the Senate, not less than three nor more than five competent and discreet persons in each county, who shall be citizens and qualified electors thereof and who shall be known as the board of registration of _____ County. The members so appointed shall be subject to removal by the Governor for incapacity, misconduct or neglect of duty.

HISTORY: 1962 Code § 23-51; 1952 Code § 23-51; 1950 (46) 2059; 1967 (55) 634; 1970 (56) 2337.

Related Local Laws—

For local laws pertaining to number of members of boards in Charleston, Florence, Georgetown, Laurens, Newberry, Orangeburg, and Richland Counties, see Local Law Index.

For local laws pertaining to registration and elections commission of Lexington County, and abolishing commissioners of election and registration board of Lexington County, see Local Law Index.

Cross references—

As to constitutional provisions regarding registration of voters, see SC Const, Art 2, § 8.

Research and Practice References—

25 Am Jur 2d, Elections § 103.

29 CJS, Elections § 42.

ALR and L Ed Annotations —

Voting rights of persons mentally incapacitated. 80 ALR3d 1116.

CASE NOTES

Governor given the power of appointment when Senate is not in session.—This section manifestly gives the Governor the right to appoint when the Senate is not in session, and his appointees can hold under that appointment until it is confirmed by the Senate for two years from the date of the appointment, or the holding terminated by the Senate's failure to ap-

prove. And when in session such appointees are entitled to compensation as against the old members who refused to give up their office from the time of appointment to the nonconfirmation. *Mitchell v Jones*, 94 SC 487, 79 SE 528 (1913).

Senate given power to correct mistakes in appointment of supervisor.—Under this section the Senate has the

ATTORNEY GENERAL'S OPINIONS

When vacancies exist in offices held by members appointed two years prior and not subsequently appointed, Governor may fill such vacancies at any time. 1969-70 Ops. Att'y Gen., No 2862, p 99.

Clerical help.—Members of the boards of registration appointed may employ such clerical help as is necessary to perform the necessary duties when funds therefor are available. 1963-64 Ops. Att'y Gen., No 1732, p 221.

County boards of registration and county election commissions are to be, and must be, separate with reference to their officers and to the performances of their duties; and cannot merge into one body for any purpose. Op. Atty. Gen. to Mr. W. Don Owens, Mar. 9, 1979.

The provisions of this section are deemed directory not mandatory, and, therefore, the board's size can be increased from three to five members even in odd-numbered years. Op. Atty. Gen. to Hon. Larry A. Gentry, Mar. 7, 1983.

The Governor has the power, under this section and 1976 Code 7-5-30, to fill a vacancy at any time. Op. Atty. Gen. to Mr. Harold A. Trask, Jr., Sept. 15, 1976.

Governor may fill positions when General Assembly not in session. —

When the General Assembly is not in session the Governor has the power to fill appointed positions requiring the consent of the Senate, with the terms of these appointed positions extending until the adjournment of the next session of the General Assembly. 1974-75 Op. Att'y Gen., No. 4180, p. 234.

County boards of registration and county election commissions are to be, and must be, separate with reference to their officers and to the performance of their duties; and cannot merge into one body for any purpose. Op. Atty. Gen. to Mr. W. Don Owens, Mar. 9, 1979.

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The Governor has the power, under this section and 1976 Code 7-5-30, to fill a vacancy at any time. Op. Atty. Gen. to Mr. Harold A. Trask, Jr., Sept. 15, 1976.

§ 7-5-20. Deputy members of boards of registration.

Section 7-5-20. The board of registration of each county may appoint deputy members of the board, in numbers as may be necessary, whose terms shall be for a period of time as determined by the boards. The deputy members shall have the same powers and duties as regular members of the board. The clerk to each board may be made a deputy member of the board for the purpose of taking applications.

HISTORY: 1962 Code § 23-51.1; 1967 (55) 634; 1984 Act No. 510

Related Local Laws—

For local laws pertaining to deputy members of boards of registration in Anderson, Colleton, and Spartanburg Counties, see Local Law index.

§ 7-5-30. Duties of boards of registration; term of office of members; quorum; vacancies.

Such boards shall register and conduct the registration of the electors who shall apply for registration in their respective counties as herein required. Their office shall be at the county seat, and they shall keep a record of all their official acts and proceedings; *provided*, that nothing herein shall be construed as prohibiting the boards of registration from taking their registration books across adjoining county lines to register qualified electors of their respective county whose regular place of employment is in an adjoining county or who are otherwise unable to get to the county seat during office hours to register. One member of the board shall constitute a quorum for the purpose of registering or refusing to register applications for registration. Their term of office shall be for two years from the date of their appointment, and they shall continue in office until their successors shall have been appointed and shall qualify. In case of a vacancy from any cause in any board of registration the Governor shall fill such vacancy in the same manner as provided in § 7-5-10.

HISTORY: 1962 Code § 23-52; 1952 Code § 23-52; 1950 (46) 2059; 1967 (55) 634; 1978 (61) 1275.

Effects of Amendments—

The 1978 amendment added, as the third sentence, a proviso, authorizing the boards to take registratin books across adjoining county lines in order to register a certain class of qualified electors.

Research and Practice References—

25 Am Jur 2d, Elections § 109.

29 CJS, Elections § 43.

ATTORNEY GENERAL'S OPINIONS

Functions of board may be conducted by as few as one board member. 1967-68 Ops. Att'y Gen., No 2468, p 136.

When vacancies exist in offices held by members appointed two years prior and not subsequently appointed, Governor may fill such vacancies at any time. 1969-70 Ops. Att'y Gen., No 2862, p 99.

Duties of registering voters may be alternated.—A county registration board may alternate between its members the duties of registering voters

and may dispense with deputy members and registration clerks. 1967-68 Ops. Att'y Gen., No 2468, p 136.

Governor may fill positions where General Assembly not in session. — When the General Assembly is not in session the Governor has the power to fill appointed positions requiring the consent of the Senate, with the terms of these appointed positions extending until the adjournment of the next session of the General Assembly. 1974-75 Op. Att'y Gen., No. 4180, p. 234.

The General Assembly has not provided a provision which would allow the county registration or election board to hold an election in one county and then transport the data processing cards to another county to be counted by a computer. Op. Atty. Gen. to Mr. James A.

Bell, Nov. 10, 1981.

Absentee ballot applications are clearly intended to be distributed only from the office of the county board of registration and from no other location. Op. Atty. Gen. to Mrs. Betty S. Whiteside, Sept. 2, 1982.

§ 7-5-40. Supplements to counties to help defray expenses of registration office.

Each county shall receive an annual supplement from the State to help defray the expenses of personnel in keeping the registration office open as required in § 7-5-130. Counties with populations from twenty-five thousand to one hundred thousand shall receive twice the amount of such supplement; counties with populations from one hundred thousand one to two hundred thousand shall receive three times the amount of the supplement; counties with over two hundred thousand shall receive four times the amount of the supplement. Such supplements shall be in such amounts as provided for in the annual general appropriations act of the State.

HISTORY: 1962 Code § 23-51.2; 1967 (55) 634.

QUALIFICATIONS AND REGISTRATION OF ELECTORS § 7-5-110

ARTICLE 3

REQUIREMENT OF AND QUALIFICATIONS FOR REGISTRATION

Sec.

- 7-5-110. Persons must register in order to vote.
- 7-5-120. Qualifications for registration; persons disqualified.
- 7-5-130. Time and place where books shall be kept open for registration.
- 7-5-140. Additional days and hours for registration; notice of time and place.
- 7-5-150. Closing registration books; registration of persons coming of age while books closed.
- 7-5-160. Voter registration to be permanent: effect on provisions of law establishing registration procedures, etc.
- 7-5-170. Necessity for written application for registration; form; oaths; decisions on applications.
- 7-5-180. Procedure for registration when qualification shall be completed after closing books.
- 7-5-190. Issuance and delivery of registration certificates by boards.
- 7-5-200. Certificates shall be furnished to registered voters; execution and form of certificates.
- 7-5-210. Physically disabled persons may execute forms by mark.
- 7-5-220. Certificates shall be invalid at election within thirty days of issuance.
- 7-5-230. Boards of registration shall determine qualifications; appeal from denial of registration or restoration of name on registration books.
- 7-5-240. Proceedings on appeal in court of common pleas.
- 7-5-250. Right to and proceedings on further appeal to Supreme Court.
- 7-5-280. State Election Commission shall furnish registration forms.

§ 7-5-110. Persons must register in order to vote.

No person shall be allowed to vote at any election unless he shall be registered as herein required.

HISTORY: 1962 Code § 23-61; 1952 Code § 23-61; 1950 (46) 2059; 1967 (55) 634.

Cross references—

As to the right of suffrage, see SC Const, Art 2.

Research and Practice References—

25 Am Jur 2d, Elections § 102.
29 CJS, Elections § 38.

CASE NOTES

Voter in incorporation election must reside in area to be incorporated.—Because of the special requirements of SC Const, Art 8, § 2 (see now S.C. Const., Art. 8, § 8), the registration required by this section [Code 1962 § 23-61] would not entitle one to vote in an incorporation election unless he was actually residing in the area to be incorporated at the time of the election. *Brisben v Thornton*, 258 SC 524, 189 SE2d 827 (1972).

One may be a qualified elector in the

area to be incorporated, but disqualified to vote in an incorporation election because actually residing elsewhere. *Brisben v Thornton*, 258 SC 524, 189 SE2d 827 (1972).

Registering necessary part in Federal election.—Since it is a prerequisite in South Carolina to register before voting, it is clear that registering is a necessary and vital part of participating in a Federal or general election, where members of Congress are to be elected. *United States v Ellis*, 43 F Supp 321 (1942).

§ 7-5-20. Qualifications for registration; persons disqualified.

Every citizen of this State and the United States who:

- (1) Is at least eighteen years of age;
- (2) Is not laboring under disabilities named in the Constitution of 1895 of this State;
- (3) Is a resident in the county and in the polling precinct in which the elector offers to vote;
- (4) Applies for registration; must be registered; provided that:
 - (a) Persons who are mentally incompetent or confined in any public prison; and
 - (b) Persons convicted of a felony or offenses against the election laws are disqualified from being registered or voting, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

Editor's Note—

Section 2A of 1981 Act No. 1 provides as follows:

"Section 2A. The provision of paragraph (b) of Section 7-5-120, as amended in Section 2, shall apply to all persons falling within the amended provision regardless of the date of their conviction."

Effect of Amendments—

The 1981 amendment inserted the words "a felony" in paragraph (b) in place of the words "burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen good, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny murder, rape"; substituted the word "offenses" for the word "crimes"; and substituted the words "service of the sentence, including probation and parole time unless sooner pardoned" for the word "pardon."

Cross references—

As to free and open elections, see SC Const, Art 1, § 5.

As to residential qualifications of electors, see SC Const, Art 2, § 4.

As to constitutional rule that General Assembly may require demonstration of literacy, see SC Const, Art 2, § 6.

As to constitutional provisions regarding disqualifications by reason of mental incompetence or conviction of crime, see SC Const, Art 2, § 7.

As to registration of absentee voters, see §§ 7-15-110 et seq.

As to being deprived of the right of suffrage on conviction of sending or accepting a challenge to duel, see § 16-3-410.

As to receipt of public aid not disfranchising qualified citizens, see § 7-1-30.

Research and Practice References—

25 Am Jur 2d, Elections §§ 58 et seq.

29 CJS, Elections §§ 14 et seq.

1 Am Jur Proof of Facts, Age, Proof No. 6 (baptismal record).
1 Am Jur Proof of Facts, Age, Proof No. 7 (birth certificates).
4 Am Jur Proof of Facts, Domicil, Proof No. 1 (domicil).
Constitutional Law—Elections—Durational Residency Requirement. 23 SC L
Rev 320.

ALR and L Ed Annotations--

State voting rights of residents of federal military establishment. 34 ALR2d 1193.

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR2d 1238.

Residence or domicil of student or teacher for purpose of voting. 98 ALR2d 488.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303.

Residence of students for voting purposes. 44 ALR3d 797.

Validity, under Federal Constitution, of state residency requirements for voting in elections. 31 L Ed 2d 861.

CASE NOTES

Registration lists not conclusive of qualifications for voting in incorporation elections.—Registration lists, compiled by the State Election Commission, which are based upon the general qualifications for electors as set forth in SC Const. Art 2, § 4, and this section [Code 1962 § 23-62], are not necessarily conclusive of the additional qualifications required for voting in incorporation elections under SC Const. Art 8, § 2 (see now S. C. Const. Art. 8, § 8). *Brisben v Thornton*, 258 SC 524, 189 SE2d 827 (1972).

Cited in *Ferrara v Ibach*, 285 F Supp 1017 (DSC 1968).

Necessary qualification to vote must be alleged in action against managers for refusal to allow vote.—In an action against the managers of election for the refusal of the right to vote, the person so refused must allege the necessary qualifications which are conditions precedent to his right to vote.

Wiley v Sinkler, 179 US 58, 21 S Ct 17, 45 L Ed 84 (1900); *Logan v Stanley*, 95 SC 22, 78 SE 524 (1913).

Former §7-5-120(5)(b), which disqualifies persons convicted of crimes from registering or voting, does not violate the Fourteenth Amendment to the United States Constitution since § 2 of the Amendment immunizes any classification of disqualifying crimes, whether the classification is stated in terms of "felonies" generally, or of some felonies, or of certain specified crimes, from the equal protection constraints of § 1 of the Amendment. However, the case would be remanded for consideration by the District Court of the plaintiff's claim and that the statute was racially discriminatory where the record failed to present any evidence on this issue. *Allen v Ellisor*, 1981, CA4 SC) 664 F2d 391.

ATTORNEY GENERAL'S OPINIONS

A person who is mentally handicapped, but who has not been declared mentally incompetent and who has met all other statutory requirements for registration may be registered to vote. Op. Atty. Gen. to Mr. James B. Ellisor, Feb. 24, 1983.

Although not completely free from doubt, it is the opinion of this Office that

South Carolina state courts would follow the majority rule that a felony conviction under federal law would be a felony under this section, thus disenfranchising the one so convicted until his civil rights have been restored. Op. Att'y Gen. to Mr. James B. Ellisor, Aug. 3, 1984.

ATTORNEY GENERAL'S OPINIONS

Whether conviction had in court of magistrate or general sessions — Conviction for offenses named is a disqualifying factor, whether such conviction is had in the court of magistrate or general sessions. 1963-64 Ops. Att'y Gen., No 1717, p 190.

Conviction in magistrate's court of certain crimes will disqualify a person from becoming an elector. 1964-65 Ops. Att'y Gen., No 1910, p 201.

Disqualification arises at time of conviction. 1964-65 Ops. Att'y Gen., No 1940, p 241.

And it is not stayed by appeal. 1964-65 Ops. Att'y Gen., No 1940, p 241.

Conviction of disqualifying offense in a foreign jurisdiction is sufficient to disqualify one from suffrage rights in South Carolina. 1964-65 Ops. Att'y Gen., No 1912, p 202.

Registration of college students in college community — A college student must show that he plans to live permanently or indefinitely within the college community in order to register to vote there. 1973-74 Op. Att'y Gen., No. 3918, p 357.

A woman living with her husband would not be prohibited from establishing her own residency for the purpose of voting in South Carolina, even though her military husband did not declare the State of South Carolina as his residence. 1975-76 Op Atty Gen. No 4324, p 145.

A person pleading nolo contendere to a disqualifying offense under § 23-62(5-b) [1976 Code § 7-5-120(5-b)] would be disqualified from registering to vote. 1976-77 Op. Atty Gen., No. 77-176, p 137.

A person who has been convicted of forging a drug prescription would also be deemed a forger under §23-62 [1976 Code § 7-5-120] and therefore disqualified from registering to vote. 1976-77 Op Atty Gen, No 77-106, p 94.

One convicted of criminal conspiracy is not disqualified from voting. 1980 Op Att'y Gen., No 80-22, p 48.

It is the opinion of this Office that South Carolina courts would follow the majority rule that a felony conviction under federal law would be a felony under this section, thus disenfranchising the one so convicted until his civil rights have been

restored. Op. Atty. Gen. to Mr. James B. Ellisor, Aug. 3, 1984.

A person who does not live within the municipality but who owns a business within the municipality would not be considered a resident for the purpose of voting in a municipal election. Op. Atty. Gen. to Hon. Martin Sauls, Jan. 31, 1977.

Only a judicial order declaring a person to be incompetent would disenfranchise a person under this section. Op. Atty. Gen. to Mr. James B. Ellisor, Feb. 24, 1983.

A person who is mentally handicapped, but who has not been declared mentally incompetent and who has met all other statutory requirements for registration may be registered to vote. Op. Atty. Gen. to Mr. James B. Ellisor, Feb. 24, 1983.

A conviction by a military court-martial does not constitute a conviction within the meaning of §7-5-120(5)(b) and a person so convicted is not disqualified from voting or registering to vote. Op. Atty. Gen. to Ms. Faye K. Jones, Oct. 16, 1979.

A juvenile convicted in juvenile or family court of a disqualifying crime would not be disqualified from voting, but a juvenile convicted in General Sessions would be disqualified. Op. Atty. Gen. to Ms. Frances M. Pennington, July 2, 1979.

Until a citizen of a particular section of Kershaw County to be annexed to Lancaster County by virtue of Act No. 348 of the 1977 Acts becomes a resident of Lancaster County, he could not register to vote in Lancaster County and thus would not be among those qualified Lancaster County electors eligible to serve as jurors in Lancaster County. 1977 Op. Atty. Gen., No. 77-398, p. 325.

In order for students to be registered to vote in the community in which they attend college, they must show that they are domiciled (intend to remain permanently or indefinitely) in that community. Op. Atty. Gen. to Hon. Earl M. Middleton, April 11, 1984.

The State may require more than a simple declaration by the student to this effect and may review several criteria to insure that the student is validly domiciled in that community. Op. Atty. Gen. to Hon. Earl M. Middleton, April 11, 1984.

§ 7-5-130. Time and place where books shall be kept open for registration.

The books of registration shall be open at each county courthouse, or at such other place as may be provided by the governing body of the county, during the same hours as other county offices are normally open, except as provided for in § 7-5-150.

HISTORY: 1962 Code § 23-63; 1952 Code § 23-63; 1950 (46) 2059; 1967 (55) 634.

Research and Practice References—

25 Am Jur 2d, Elections § 105.

29 CJS, Elections § 39.

ATTORNEY GENERAL'S OPINIONS

No provision for watchers.—No provision is contained in the South Carolina Election Law for watchers at places of registration of electors. 1964-65 Ops. Atty Gen., No 1812, p 60.

It is important that the place where persons go to register be open and accessible to all persons who desire to register. Op. Atty. Gen. to Mr. James B. Ellisor, Aug. 16, 1982.

Consistent with the idea that the right to vote in South Carolina is fundamental, it is not unlawful nor does it invalidate the vote, to register voters on Sunday. Op. Atty. Gen. to Hon. McKinlay Washington, Jr., Oct. 19, 1983.

§ 7-5-140. Additional days and hours for registration; notice of time and place.

Boards of registration shall remain open as provided by law and, in addition thereto, shall remain open and available for registration on any additional days, during such hours and at such various places throughout the county as the boards may determine. Notice of the time and place shall be given by prior publication in a newspaper of general circulation in the county.

HISTORY: 1962 Code § 23-65.1; 1957 (50) 671; 1967 (55) 634; 1982 (62) 1964.

Effect of Amendments—

The 1982 amendment added the second sentence "State boards also shall remain open and available for absentee registration and absentee voting responsibilities during such additional hours as the boards may deem necessary."

CASE NOTES

Special registration supplemental to regular registration.—The special registration for special elections was intended to supplement the regular registration in order that those who are

qualified, but not duly registered since the last general election, may not be deprived of the right to vote at special elections. *Logan v Stanley*, 95 SC 22, 78 SE 524 (1913).

ATTORNEY GENERAL'S OPINION

Payment to members of boards.— Payment made by the State to the members of the boards of registration is in full for all days on which the board is required to open or which, in its discretion, under the provisions of this section [Code 1962 § 23-65.1], the board may determine to additionally open its offices. 1964-65 Ops. Att'y Gen., No 1877, p 143.

Board may remain open on legal holiday.—A county board of registration could have, if it chose and properly announced the same, remained open on Friday, May 10, and Saturday, May 11, 1968, to accept applications for registration and to issue registration certificates, even though May 10 was a legal holiday. 1967-68 Ops. Att'y Gen., No 2446, p 104.

Even though one member of the Board of Registration without the consent of the rest of the Board, established a different place and date of registration and advertised on the radio, such registrations were not carried out in accordance with State laws and, therefore, were invalidly made. Op. Atty. Gen. to Ms. Eloise Kirkland, June 26, 1974.

Those people invalidly registered however, should be entered on the county's registration books because they thought they had done all they could do to be validly registered. Op. Atty. Gen. to Ms. Eloise Kirkland, June 26, 1974.

There is no express prohibition under existing South Carolina law against the taking of applications for voter registration in the home or door-to-door registration, so long as the provisions of Section 7-5-140 as well as other requirements are met. Ops. Att'y Gen. to General Assembly, April 13, 1984.

Notification by radio of additional registration times and places would be invalid notification. No prohibition to having radio announcements or some other method of notification to supplement the required newspaper notice. OS-862 Op. Att'y Gen. to Hon. Earle M. Middleton, March 27, 1984.

Consistent with the idea that the right to vote in South Carolina is fundamental, it is not unlawful nor does it invalidate the vote, to register voters on Sunday. Op. Atty. Gen. to Hon. McKinlay Washington, Jr., Oct. 19, 1983.

Although radio notification would be insufficient notice in itself, there would be no prohibition to having radio announcements or some other method of notification such as handbills to supplement the required newspaper notice. Op. Atty. Gen. to Hon. Earl M. Middleton, Mar. 27, 1984.

§ 7-5-150. Closing registration books; registration of persons coming of age while books closed.

The registration books shall be closed thirty days before each election, but only as to that election or any second race or runoff resulting from that election, and shall remain closed until such election shall have taken place, anything in this article to the contrary notwithstanding; *provided*, that the registration books shall be closed thirty days before the June primary and shall remain closed until after the second primary and shall likewise be closed thirty days before the November general election. They shall thereafter be opened from time to time in accordance with the provisions of this article. Such persons as shall become of age during any such period of thirty days shall be entitled to registration before the closing of the books if otherwise qualified.

HISTORY: 1962 Code § 23-66; 1952 Code § 23-66; 1950 (46) 2059; 1957 (50) 671; 1958 (50) 1548.

Cross references—

As to procedures for registration when qualification is completed after closing books, see § 7-5-180.

As to procedure for computing of time when the last day of the period is a Saturday, Sunday or legal holiday, see § 15-1-20.

ATTORNEY GENERAL'S OPINIONS

When qualification of elector determined. — Qualification of a candidate as elector as required by S.C. Const., Art. 17 § 1 is determined as of time of election and not at time of filing of his renomination petition. 1967-68 Ops. Att'y Gen., No. 2559, p 257.

Period within which persons coming of age or completing qualification may register — Persons who will come of age or complete qualification during the 30-day period of the closing of the books before an election may apply for registration during the 60-day period preceding such closing. 1964-65 Ops. Att'y Gen., No 1935, p. 235.

Municipal party primary winner entitled to be candidate in general election. — Municipal party primary winner in race for city council was entitled to be his party's candidate in the general election although he had not been registered 30 days in his precinct prior to the primary but will have been registered more than 30 days at the time of the general election. 1971-72 Ops. Att'y Gen., No 3289, p 96.

For a petition signature to be valid, the petitioner must have registered to vote at least 30 days prior to the final date for filing the petition. Op. Atty. Gen. to Mr. Joseph H. Earle, Jr., Nov. 5, 1981.

A candidate who registered to vote on the first available day in that the registration board was closed on Saturday and Sunday is still required to meet the 30 day registration requirement in order to be qualified as of the time of the general election. Op. Atty. Gen. to Mr. William Myrick, Jr., Oct. 19, 1981.

The thirty-day deadline requires that the candidate must be qualified as of the time of the general election. Op. Atty. Gen. to Hon. Larry Blanding, Mar. 26, 1980.

Although radio notification would be insufficient notice in itself, there would be no prohibition to having radio announcements or some other method of notification such as handbills to supplement the required newspaper notice. Op. Atty. Gen. to Hon. Earl M. Middleton, Mar. 27, 1984.

CASE NOTES

Statutory requirement that, as qualification of voting in any election, one must be duly registered on books of registration of state at least 30 days prior to election is valid and constitutional; there is nothing racially discriminatory in statute since person has no federal constitutional right to walk up to voting place on election day and demand ballot; states have valid and suf-

ficient interest in providing for some period of time prior to election in order to prepare adequate voter records and protect electoral processes from possible frauds. Key v Board of Voter Registration (1980, CA4 SC) 622 F2d 88, cert den (US) 66 L Ed 2d 99, 101 S Ct 222, reh den (US) 66 L Ed 2d 302, 101 S Ct 547.

§ 7-5-155. Registration by Mail.

Notwithstanding any other provision of law, the following procedures may be used in the registration of electors in addition to the procedure otherwise provided by law.

(1) Subject to the provision of Section 7-5-150, any qualified citizen may register to vote by mailing or having delivered a completed application not later than forty-five days immediately prior to any election to his registration board. The postmark date of a mailed application is considered the date of mailing. The application must be witnessed by a qualified elector from the respective county. The name, address, the voter certificate number of the witness, and where applicable the telephone number must be legibly written on the application. The person witnessing the application may not be a filed candidate for public office at the time of the application. Any applicant or witness is subject to the penalty provided in Section 7-25-20 for fraudulent registration.

(2) If the registration board determines that the applicant is qualified and his application is legible and complete, the registration board shall mail the voter written notification of approval on a form to be prescribed and provided by the State Election Commission pursuant to Section 7-5-180. When the county board of registration mails the written notification of approval, it must do so without requiring the elector to sign anything in the presence of a member of the board, a deputy member, or a registration clerk, and the attestation of the elector's signature is not required so long as the conditions set forth above are met.

(3) Any application must be rejected for any of the following reasons:

(i) Any portion of the application is not complete.

(ii) Any portion of the application is illegible in the opinion of a member and the clerk of the board.

(iii) The board is unable to determine, from the address stated on the application, the precinct in which the voter should be assigned or the election districts in which he is entitled to vote.

(4) Any person whose application is rejected must be notified of the rejection together with the reason for rejection. The applicant must further be informed that he still has a right to register by appearing in person before the board of registration or by submitting the information by mail necessary to correct his rejected application. The form for notifying applicants of rejection must be prescribed and provided by the State Election Commission pursuant to Section 7-5-180.

(b) The State Election Commission shall furnish a sufficient number of applications to the county registration boards so that distribution of the applications may be made to various locations throughout the counties and mailed to persons requesting them.

County boards of registration shall distribute application forms to various locations in their respective counties where they must be readily available to the public.

(c) Every application for registration by mail shall contain spaces for the home and work telephone numbers of the applicant and the applicant shall enter the numbers on the application where applicable.

(d) The original applications must remain on file in the office of the county board of registration.

(e) The State Election Commission may promulgate regulations to implement the provisions of this section.

§ 7-5-160. Voter registration to be permanent: effect on provisions of law establishing registration procedures, etc.

Effective July 1, 1976, any person who is registered to vote according to law shall remain permanently registered and entitled to all rights and privileges of such registration unless his name is removed from the registration list for cause. The provisions of this section shall not be construed to modify or repeal any of the provisions of this Title or acts of the General Assembly which establish registration procedures and prescribe the causes for termination of registration or purging of registration rolls except those which require reregistration at ten-year intervals.

HISTORY: 1962 Code § 23-67; 1952 Code § 23-67; 1950 (46) 2059; 1957 (50) 671; 1976 (59) 1513.

Cross references —

As to registration procedures, see § 7-5-170 et seq.

As to causes and procedure for deletion of names of electors from rosters of registered electors, see §§ 7-3-20 and 7-3-30.

HISTORY: 1976 Act No. 518.

Effect of Amendments—

The 1976 amendment substantially revised this section.

§ 7-5-170. Necessity for written application for registration; form; oaths; decisions on applications.

(1) *Written application required.*—No person may be registered to vote except upon written application which shall become a part of the permanent records of the board to which it is presented and must be open to public inspection.

(2) *Form of application.*—The application must be on a form prescribed and provided by the executive director and shall contain the following information:

APPLICATION FOR REGISTRATION

Dated at _____, S.C., _____
day of _____, 19_____.

I, _____, a

Last Name—First Name—Middle Initial

citizen of this State and the United States, hereby apply for registration as an elector and certify under oath that:

1. I am a male/female, a member of the _____ race, born at _____, on _____ I reside at _____ Street in the town or city of _____ or on _____ Road in _____ Township or Parish in _____ County. My precinct is _____. My weight is _____ lbs., my height is _____ ft. _____ in., the color of my eyes is _____, the color of my hair is _____.

2. I am a resident of South Carolina, this county and in the voting precinct at which I will be entitled to vote if a registration certificate is issued to me upon this application.

3. I am not now under a court order declaring me mentally incompetent or confined in any public prison.

4. (a) I have never been convicted of a felony or crimes against the election laws; or

(b) I have been convicted of a felony or crimes against the election laws.

Date of Conviction _____, _____
Month Year

the criminal offense convicted of was _____

the total length of my sentence was _____; and
No. of years or months

(c) I have served my entire sentence, all probation and parole time, or I have been legally pardoned for the conviction.

5. My social security or identification number is _____.
If none, so state

6. My place of birth is _____.

7. I was last registered in _____

Precinct, _____ County, _____ State.

8. My occupation is _____.

9. My mailing address is _____.

10. My telephone number is _____.

WHOEVER SHALL, WILFULLY AND KNOWINGLY, SWEAR FALSELY IN TAKING ANY OATH REQUIRED BY LAW, ADMINISTERED BY ANY PERSON DIRECTED OR PERMITTED BY LAW TO ADMINISTER SUCH OATH, IS GUILTY OF PERJURY AND ON CONVICTION, INCUR THE PAINS AND PENALTIES OF THAT OFFENSE.

Sworn to and subscribed before me this _____ day of _____, 19

Member or Clerk of Registration Board

Applicant

(3) *Administration of oaths.*—Any member of the registration board, deputy registrar, or any registration clerk must be qualified to administer oaths in connection with the application.

(4) *Decisions on applications.*—Any member of the registration board, deputy registrar, or registration clerk may pass on the qualifications of the prospective voter. In case of a question of an applicant being refused registration, at least one member of the board shall pass on the qualifications of the voter. A concise statement of the reasons for the refusal must be written on the application.

HISTORY: 1962 Code § 23-68; 1952 Code § 23-68; 1950 (46) 2059; 1951 (47) 78; 1957 (50) 671; 1965 (54)283; 1967 (55) 657; 1968 (55) 2316; 1974 (58) 2184; 1984 Act No. 304; 1984 Act No. 510; 1986 Act No. 345.

Cross references—

As to punishment for false swearing in applying for registration, see § 7-25-10.

ATTORNEY GENERAL'S OPINIONS

Where application for registration must be signed. — According to the election law an application for registration must be signed in the presence of a member of the board or the clerk of the registration board. 1968-69 Ops. Att'y Gen., No. 2653, p. 68.

The payment of taxes and the certification of residence for the purpose of motor vehicle registration are factors to take into consideration in determining the place of residence, but not conclusive factors. 1963-64 Ops. Att'y Gen., No 1729, p. 216.

Registration of student. — A student may properly be asked under subdivision (4) if he is registered to vote in another

county. Where do his parents live? What is his place of residence as shown upon the college records? Military records? Insurance records? Driver's license? Other documents? 1963-64 Ops. Att'y Gen., No. 1729, p 216.

A student may be registered to vote in the community where he attends college only if he establishes that he is a bona fide resident of that community. In establishing such residency, it must be demonstrated that the student intends to remain in the community permanently or indefinitely. Op. Att'y Gen. to Hon. Earl M. Middleton, April 11, 1984.

It is not necessary to have a Social Security number in order to register to vote. Under the provisions of the registration application, however, it is necessary to either give the Social Security number or state that the individual does not have a Social Security number. Op. Atty. Gen. to Hon. Richard L. Rigdon, Oct. 26, 1981.

A person who is mentally handicapped, but who has not been declared mentally incompetent and who has met all other statutory requirements for registration may be registered to vote. Op. Atty. Gen. to Mr. James B. Ellisor, Feb. 24, 1983.

§ 7-5-180. Procedure for registration when qualification shall be completed after closing books.

In case any person who has not attained the age of eighteen years before

the closing of the books of registration preceding any election but attains such age before the next ensuing election appears before the board of registration and makes application for registration, under oath as to the facts above stated entitling a person to registration, the board must register the applicant, if he is otherwise duly qualified. Any person not laboring under the disabilities named in the Constitution and in Section 7-5-120 and whose qualification as an elector is completed after the closing of the registration books, but before the next ensuing election, has the right to apply for and secure registration at any time within sixty days immediately preceding the closing of the books for the election or for the primary election preceding the election. Written notification of approval or rejection must be issued personally, or mailed by the board to each applicant on a form to be prescribed and provided by the State Election Commission. The decision of the board of registration may be appealed as provided by Section 7-5-230.

HISTORY: 1962 Code § 23-69; 1952 Code § 23-69; 1950 (46) 2059; 1967 (55) 634; 1968 (55) 2316; 1976 (59) 1886; 1984 Act. No. 510.

Cross references—

As to registration of persons coming of age while books closed, see § 7-5-150.

As to procedure for computing of time when the last day of the period is a Saturday, Sunday or legal holiday, see § 15-1-20.

ATTORNEY GENERAL'S OPINIONS

Municipal party primary winner entitled to be candidate in general election.—Municipal party primary winner in race for city council was entitled to be his party's candidate in the general election as being qualified elector although he had not been registered 30

days in his precinct prior to the primary, but will have been registered more than 30 days at the time of the general election. 1971-72 Ops. Att'y Gen., No. 3289, p. 96.

§ 7-5-210. Physically disabled persons may execute forms by mark.

In cases of inability to write on account of physical disability only, any prospective registrant to vote may sign the application and oath by mark in the presence of a clerk or a member of the board of registration.

HISTORY: 1962 Code § 23-72.1; 1958 (50) 1591; 1984 Act. No. 510.

Cross references—

As to barrier-free polling places for physically handicapped electors, see § 7-7-990.

§ 7-5-220. Registration shall be invalid at election within thirty days of such registration.

Registration made thirty days or less before any election is not valid for that election or any second race or runoff resulting from that election but such registration shall be valid in any other election.

HISTORY: 1962 Code § 23-72.2; 1958 (50) 1548; 1984 Act No. 510.

Cross references—

As to procedure for computing of time when the last day of the period is a Saturday, Sunday or legal holiday, see § 15-1-20.

ATTORNEY GENERAL'S OPINIONS

Effect of registering thirty days or less from election.—This section [Code 1962 § 23-72.2] prohibits voter obtaining registration thirty days or less from an election from voting in that election. 1969-70 Op Att'y Gen, No 2821, p 33.

Municipal party primary winner entitled to be candidate in general elec-

tion.—Municipal party primary winner in race for city council was entitled to be his party's candidate in the general election although he had not been registered 30 days in his precinct prior to the primary, but will have been registered more than 30 days at the time of the general election. 1971-72 Op Att'y Gen, No 3289, p 96.

§ 7-5-230. Boards of registration shall determine qualifications; appeal from denial of registration or restoration of name on registration books.

The boards of registration to be appointed under § 7-5-10 shall be the judges of the legal qualifications of all applicants for registration. Any person denied registration or restoration of his name on the registration books shall have the right of appeal from the decision of the board of registration denying him registration or such restoration to the court of common pleas of the county or any judge thereof and thence to the Supreme Court.

HISTORY: 1962 Code § 23-73; 1952 Code § 23-73; 1950 (46) 2059; 1967 (55) 657.

Cross references—

As to constitutional right to appeal by person denied registration, see SC Const, Art 2, § 9.

Research and Practice References—

25 Am Jur 2d, Elections §§ 112 et seq.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 21 (petition or application to compel registration of voter).

§ 7-5-240. Proceedings on appeal in court of common pleas.

Any person denied registration or restoration of his name on the registration books and desiring to appeal must within ten days

after written notice to him of the decision of the board of registration file with the board a written notice of his intention to appeal therefrom. Within ten days after the filing of such notice of intention to appeal, the board of registration shall file with the clerk of court of common pleas for the county the notice of intention to appeal and any papers in its possession relating to the case, together with a report of the case if it deem proper. The clerk of the court shall file the same and enter the case on a special docket to be known as calendar number four. If the applicant desires the appeal to be heard by a judge at chambers he shall give every member of the board of registration four days' written notice of the time and place of the hearing. On such appeal the hearing shall be de novo.

HISTORY: 1962 Code § 23-74; 1952 Code § 23-74; 1950 (46) 2059; 1967 (55) 657.

Cross references—

As to appellate review, generally, see Title 18.

As to procedure for computing of time when the last day of the period is a Saturday, Sunday or legal holiday, see § 15-1-20.

§ 7-5-250. Right to and proceedings on further appeal to Supreme Court.

From the decision of the court of common pleas or any judge thereof the applicant may further appeal to the Supreme Court by filing a written notice of his intention to appeal therefrom in the office of the clerk of court of common pleas within ten days after written notice to him of the filing of such decision and within such time serving a copy of such notice on any member of the board of registration. Thereupon, the clerk of the court of common pleas shall certify all the papers in the case to the clerk of the Supreme Court within ten days after the filing of such notice of intention to appeal. The clerk of the Supreme Court shall place the case on a special docket, and it shall come up for hearing upon the call thereof under such rules as the Supreme Court may make. If such appeal be filed with the clerk of the Supreme Court at a time that a session thereof will not be held between the date of filing and election at which the applicant will be entitled to vote if registered, the Chief Justice or, if he is unable to act or disqualified, the senior associate justice shall call an extra term of the court to hear and determine the case.

HISTORY: 1962 Code § 23-75; 1952 Code § 23-75; 1950 (46) 2059; 1967 (55) 634.

§ 7-5-280. State Election Commission shall furnish registration forms.

The applications provided for in this article as well as all other forms

necessary for registration must be furnished to each county by the State Election Commission.

HISTORY: 1962 Code § 23-80; 1957 (50) 671; 1971 (57) 85; 1984 Act No. 510.

Cross references—

As to the creation of the State Election Commission, see § 7-3-10.

ARTICLE 5

REGISTRATION BOOKS, LISTS OF ELECTORS AND THE LIKE

SEC.

7-5-410. Maintenance and inspection of official registration records.

7-5-420. Lists of voters for party primaries.

7-5-430. Books for general and special elections.

7-5-440. Electors must appear on official lists or prove registration to vote.

7-5-450. Who is to furnish certificate to prove registration.

7-5-460. Custody of books and return after election.

7-5-470. Division of registration books into sections.

§ 7-5-410. Maintenance and inspection of official registration records.

Each board of registration shall deposit the official records of registration for safekeeping in the board's office or in the office of the clerk of court of common pleas for its county, who shall keep them with the other records in his office. The official registration records shall be public records open to the inspection of any citizen at all times and shall not be removed from the office by any person except the board of registration which may take and keep them as long as may be necessary to enable it to perform its duties. The official records of registration shall not be kept anywhere else except when their use is required elsewhere by the provisions of this Title.

HISTORY: 1962 Code § 23-97; 1952 Code § 23-97; 1950 (46) 2059; 1967 (55) 634.

Related Local Laws—

For a local law pertaining to disposition of old voter registration records in Saluda County, see Local Law Index.

Research and Practice References—

25 Am Jur 2d, Elections § 109.

29 CJS, Elections § 47.

ATTORNEY GENERAL'S OPINIONS

This section [Code 1962 § 23-97] has reference to all of the records relating to registration, including the copies or duplicates of the registration books which are prepared for use in the various precincts. 1963-64 Ops. Att'y Gen., No 1718(b), p 194.

Restriction of right of inspection.— While the records are being kept by

the boards of registration for the performance of their duties, the right of inspection may be restricted, partially or completely, by the board of registration, depending upon whether the board determines that inspection may interfere with the process of registration. 1963-64 Ops. Att'y Gen., No 1718(b), p 194.

§ 7-5-420. Lists of voters for party primaries.

Immediately preceding each party primary election the board of registration in each county shall furnish to the county committee of each political party proposing to hold a primary two official lists of voters for each polling precinct in the county, containing in each the names of all electors entitled to vote at each precinct.

HISTORY: 1962 Code § 23-98; 1952 Code § 23-98; 1950 (46) 2059; 1967 (55) 634.

Attorney General's Opinions

The State Election Commission is not required to provide a computer list of voters free of charge to a political party for an election that is not authorized by law, such as a Presidential preference election. Op. Atty. Gen. to Mr. James B. Ellis, Oct. 1, 1979.

§ 7-5-430. Books for general and special elections.

Immediately preceding each general election or any special election the board of registration shall furnish to the commissioners of election for their county two registration books for each polling precinct in their county containing in each the names of all electors entitled to vote at each precinct.

HISTORY: 1962 Code § 23-99; 1952 Code § 23-99; 1950 (46) 2059.

§ 7-5-440. Electors must appear on official lists or prove registration to vote.

No elector shall vote in any polling precinct unless his name appears on the official list of voters for the precinct. If the name of any registered elector does not appear or incorrectly appears on the official list of voters of his precinct he may vote if he presents to the managers of election

of the precinct, in addition to his valid South Carolina driver's license or other form of identification required by Section 7-13-710 if he is not licensed to drive, a certificate of a member of the registration board of his county that his name is registered and on file in the office of the registration board of his county or a certificate of the executive director that his name is enrolled in the records of his county on file in the office of the executive director. Any elector may also vote upon presenting the written notification of registration issued by the board if the elector has signed the notification.

At least one member of the county registration board must be present in the registration board's office at all hours during which the polls are open on every election day for the purpose of carrying out the provisions of this section.

HISTORY: 1962 Code § 23-100; 1952 Code § 23-100; 1950 (46) 2059; 1967 (55) 657; 1968 (55) 2316; 1984 Act. No. 510.

ATTORNEY GENERAL'S OPINIONS

Failure of registration officials to make proper record will not deny elector right to vote.—The mere failure of registration officials to record the name, address, and age of an otherwise properly registered elector in the registration book will not operate to deny to such elector his right to cast his ballot. 1963-64 Ops. Att'y Gen., No 1679, p 127.

Elector whose name is omitted from books at polling place must obtain certificate.—In the event a name is omitted from the books at the polling place, the defect may be remedied under the provisions of this section [Code 1962 § 23-100] by obtaining the

certificate required therein, but the elector should not be permitted to vote unless he does obtain such certificate. 1963-64 Ops. Att'y Gen., No 1679, p 127.

But one whose name has been inadvertently left off all books should be allowed to vote.—If the name of the elector has been inadvertently left off all registration books, that is, the county book, the county book filed with the Secretary of State, and the books at the polling places, the elector is not at fault for these omissions and has no statutory remedy. He should, therefore, be permitted to vote. 1963-64 Ops. Att'y Gen., No 1679, p 127.

§ 7-5-460. Custody of books and return after election.

The commissioners of election or the county committee, as the case may be, shall turn over such books to the managers of election of each polling precinct or club, who shall be responsible for the care and custody of such books and the return thereof within three days after such election. The commissioners of election or the county committee, as the case may be, shall return such books to the board of registration prior to the day on which the books of registration are next required by law to be opened by the board of registration and in no event later than twenty days after such election.

HISTORY: 1962 Code § 23-102; 1952 Code § 23-102; 1950 (46) 2059.

§ 7-5-470. Division of registration books into sections.

The board of registration may divide the registration books into as many separate sections as shall be directed by the county committee of any political party, the cost of such additional separate section or sections to be borne by such county committee. The books constituting a separate section or sections shall first be approved by the State Election Commission.

HISTORY: 1962 Code § 23-103; 1952 Code § 23-103; 1950 (46) 2059, 2442; 1971 (57) 85.

ARTICLE 7

SPECIAL PROVISIONS FOR MUNICIPAL ELECTIONS

SEC.

7-5-610. Who is entitled to vote in municipal elections.

7-5-620. Production of county certificate of registration and proof of residence is required.

7-5-630. Municipal registration or enrollment shall not be required.

7-5-670. Use and custody of registration books.

§ 7-5-610. Who is entitled to vote in municipal elections.

Requirements for voting in municipal elections.

Section 7-5-610. Every citizen of this State and of the United States:

- (1) Of the age of eighteen years and upwards;
- (2) Having all the qualifications mentioned in Section 7-5-120;
- (3) Who has resided within the corporate limits of any incorporated municipality in this State for thirty days previous to any municipal election;

(4) Who has been registered for county, state, and national elections as herein required:

Is entitled to vote at all municipal elections of his municipality.

HISTORY: 1962 Code § 23-111; 1952 Code § 23-111; 1950 (46) 2059; 1951 (47) 78; 1984 Act No. 290

ATTORNEY GENERAL'S OPINIONS

A person who does not live within the municipality but who owns a business within the municipality would not be considered a resident for the purpose of voting in a municipal election. Op. Atty. Gen. to Hon. Martin Sauls, Jan. 31, 1977.

Persons on the fringe areas of the Lorris City limits who pay city taxes and receive city services but who do not live within the city limits cannot vote in the municipal election. Op. Atty. Gen. to Mr. Carroll D. Padgett, Jr., Nov. 17, 1977.

§7-5-620 Production of proper identification and proof of residence is required.

The production of a valid South Carolina driver's license or other form of identification required by Section 7-13-710, if he is not licensed to drive, and proof of the residence of the elector within the limits of the municipality for thirty days preceding any election constitutes conditions prerequisite to the right of any elector to vote.

HISTORY: 1962 Code § 23-112; 1952 Code § 23-112; 1951 (47) 78;
1984 Act No. 290; 1984 Act. No. 510.

§ 7-5-630. Municipal registration or enrollment shall not be required.

There shall be no registration or enrollment required for voting in municipal elections except the registration required for voting in county, State and national elections.

HISTORY: 1962 Code § 23-113; 1952 Code § 23-113; 1951 (47) 78, 229.

§ 7-5-660. Preparation of registration books.

Such supervisors of registration shall, along with the county board of registration in each county, prepare duplicate sets of books of registration for each ward or each precinct, showing the duly registered electors, according to the county registration books, living in each particular ward or precinct in the city or town.

HISTORY: 1962 Code § 23-116; 1952 Code § 23-116; 1951 (47) 78, 229; 1984 Act. No. 290

§ 7-5-670. Use and custody of registration books.

The books of registration shall be prepared and turned over to the managers of each voting place within the ward or precinct for use in conducting all municipal elections, but immediately following any municipal election such books shall be turned over to the county board of registration and shall be safely kept in the office of the clerk of court at the courthouse.

HISTORY: 1962 Code § 23-117; 1952 Code § 23-117; 1951 (47) 78, 229.

§ 7-7-10. Voting precincts established.

For the purpose of holding any general, primary or special election in this State the voting precincts and voting places in the several counties of the State shall be designated, fixed and established by the General Assembly.

HISTORY: 1962 Code § 23-153; 1952 Code § 23-153; 1950 (46) 2414; 1976 (59) 1501.

Research and Practice References—

26 Am Jur 2d, Elections § 228.

29 CJS, Elections §§ 53, 54.

ATTORNEY GENERAL'S OPINIONS

Under §7-7-10 and §5-15-50, South Carolina Code of Laws, 1976, the General Assembly is the only authority which should draw ward lines for voting purposes; municipalities can draw ward lines pursuant to §5-15-50, South Carolina Code of Laws 1976, for other than election purposes; if the General Assembly fails to designate a voting place another authority may designate the voting place; municipalities can not be able to pool all the precincts in municipality for municipal election. 1978 Op Att'y Gen. No 78 70, p 99.

Any changes made in the description of

the precinct lines in Orangeburg County would have to be accomplished through legislative action of the General Assembly. Op. Atty. Gen. to Hon. Earl M. Middleton, July 13, 1983.

County election commissions can and should only designate polling places when the legislature is not in session and either has failed to designate a polling place or some exigent circumstances require a new polling place to be designated immediately. Op. Atty. Gen. to Mr. Joseph S. Mendelson, Oct. 14, 1982.

For §7-7-30 thru 7-7-530 see Code and recently passed Legislation for county precincts and polling places.

ARTICLE 3

ALTERATION OF PRECINCTS

Sec.

7-7-710. State Election Commission shall report certain precincts to General Assembly for alteration; alteration by county registration boards where General Assembly fails to act.

7-7-720. Certificates shall be mailed to persons whose registration is transferred; removal from registration books of persons whose certificates are returned undelivered; notice to electors; restoration of name.

7-7-730. Certain precincts having more than 1,500 electors deemed to be in compliance with article.

§ 7-7-710. State Election Commission shall report certain precincts to General Assembly for alteration; alteration by county registration boards where General Assembly fails to act.

The State Election Commission shall report the names of all polling precincts by county that have more than one thousand five hundred registered electors as of January first to the General Assembly not later than the fourth Tuesday of each odd-numbered year. If, by April first of the same year, the General Assembly has failed to alter the precincts so that no precinct shall have more than one thousand five hundred qualified electors the State Election Commission shall notify the respective county registration boards which shall make such alterations as necessary to conform all precincts to such limitations. *Provided*, that precincts isolated by water shall not be required to meet minimum requirements.

HISTORY: 1962 Code § 23-221; 1971 (57) 398.

Research and Practice References—

29 CJS, Elections § 54.

ATTORNEY GENERAL'S OPINIONS

The new home rule legislation prevents the General Assembly from establishing or realigning precinct lines within a County as it formerly did. 1974-75 Op Att'y Gen. No 4058, p 136.

Footnote 1 .

(R68, S160)No. 196

A Joint Resolution To Provide That The Board Of Voter Registration In Each County Shall Suspend Any Action To Change The Boundaries Of Voting Precincts In Which There Are More Than Fifteen Hundred Registered Voters Pending Further Action By The General Assembly To Reapportion Voting Districts In Accordance With The 1980 United States Census; And To Provide That In Such Precincts Voter Lists Shall Be Divided Alphabetically In Accordance With Section 7-7-730 Of The 1976 Code And Additional Voting Places Shall Be Provided Within The Same Precinct At The Same Or Several Locations.

Be it enacted by the General Assembly of the State of South Carolina:

County boards of registration authorized to alter boundaries of voting precincts

SECTION 1. A. Notwithstanding the provisions of Section 7-7-710 of the 1976 Code and until the General Assembly completes necessary reapportionment of election districts in the State, the provisions of that section which authorizes county boards of registration to alter the boundaries of voting precincts which contain more than fifteen hundred registered voters if the General Assembly fails to alter such boundaries by April first of each year are suspended.

B. In lieu of alteration of precinct boundaries of precincts with more than fifteen hundred voters, the respective county boards of registration shall arrange the precinct voting list in alphabetical order and divide it in two or more

parts so that no part shall exceed fifteen hundred names as provided in Section 7-7-730 of the 1976 Code. Separate managers and voting facilities shall be provided for each part of the separated list either at the same voting place or at other locations within the existing precinct boundaries.

Time effective

SECTION 2. This act shall take effect upon approval by the Governor.

Approved the 27th day of April, 1981.

§7-7-720 Notification shall be mailed to persons whose registration is transferred; removal from registration books of persons whose notifications are returned undelivered; notice to electors; restoration of name.

Any person whose registration is transferred to another precinct by virtue of the provisions of this article must be delivered by mail notification from the county registration board reflecting the new precinct.

Any person whose notification is returned to the board of registration because he is no longer at the address shown on the board's records must have his name removed from the registration books. The county registration office must notify the State Election Commission of the removal. Further notice to the elector is not required. If the elector's name has been deleted solely by reason of the return of the notification, his name must be restored as a matter of course to the registration books immediately upon his request if he is otherwise qualified to vote in that precinct.

HISTORY: 1962 Code § 23-222; 1971 (57) 398; 1984 Act no. 510.

§ 7-7-730. Certain precincts having more than 1,500 electors deemed to be in compliance with article.

When a precinct has more than one thousand five hundred registered electors and an additional polling place is provided within the precinct and no polling place in such precinct is assigned more than one thousand five hundred electors the provisions of § 7-7-710 shall be deemed to be complied with. Also, the provisions of such section shall be deemed to be complied with if the precinct list is alphabetically divided so that no list contains more than one thousand five hundred electors and separate managers and facilities are provided within the polling place for each list of electors. Local registration boards dividing precincts alphabetically shall notify the Election Commission of such division so

that separate alphabetically arranged poll lists may be printed by the State Election Commission.

HISTORY: 1962 Code § 23-223; 1971 (57) 398.

ARTICLE 5

WHERE ELECTORS TO VOTE

SEC.

7-7-910. Places where electors shall be registered and vote.

7-7-920. Places where electors shall vote in municipal elections.

7-7-940. Procedure upon removal of elector from one precinct to another.

7-7-950. Procedure where new precinct is established.

7-7-960. Procedure upon change of ward or precinct boundaries; effect of annexation of part of county to municipality divided into wards.

7-7-970. Change of location of voting place or name of precinct.

7-7-980. Registration of officers and their spouses temporarily residing at capital
or county seat

7-7-990 Barrier-free polling places for physically handicapped electors; criteria and procedures for use.

§ 7-7-910. Places where electors shall be registered and vote.

Subject to the provisions of § 7-7-920, every registered elector shall be registered and, unless otherwise specified on his voting certificate, shall vote at the nearest voting place within the precinct of his residence, but in incorporated towns in which officers are elected by wards or other municipal subdivisions electors shall be registered and shall vote at the voting places nearest to their residences within the ward or other subdivision of their residences.

HISTORY: 1962 Code § 23-211; 1952 Code § 23-211; 1950 (46) 2059; 1967 (55) 657.

Related Local Laws—

For local laws pertaining to residents of areas without voting places annexed to Anderson, see Local Law Index.

For local laws pertaining to voters residing in Cheraw voting precincts Nos. 1, 2 and 3 in Chesterfield County, see Local Law Index.

Research and Practice References—

26 Am Jur 2d, Elections §§ 228, 229.

29 CJS, Elections § 199.

Cross reference—

As to constitutional provision that every qualified elector is to vote only in the precinct of his or her residence, see SC Const., Art. 1, § 4.

ATTORNEY GENERAL'S OPINIONS

Under §7-7-10 and §5-15-50. South Carolina Code of Laws, 1976, the General Assembly is the only authority which should draw ward lines for voting purposes; municipalities can draw ward lines pursuant to §5-15-50, South Carolina Code of Laws, 1976, for other than election purposes; if the General Assembly fails to designate a voting place another authority may designate the voting place; municipalities can not be able to pool all the precincts in municipality for municipal election. 1978 Op. Atty Gen. No. 78-70 p 99.

Precinct voting places must be open on election day even if only a few persons will be voting in those precincts. Op. Atty. Gen. to Nolen L. Brunson, Jan. 29, 1980.

§ 7-7-920. Places where electors shall vote in municipal elections.

In all municipal elections when the aldermen or councilmen are elected by wards, the electors shall vote at the voting place within their ward nearest their residences, and in all municipal elections when the aldermen, councilmen or other officials are elected by a vote at large within the municipality, the electors shall vote at the voting place in the precinct within which they reside which is nearest their residences.

In all municipal elections when the ward lines and the precinct lines coincide within the city limits of the municipality, electors shall vote at the nearest voting place within the ward or precinct.

In any city or town having not more than one polling precinct, established by ordinance, for municipal elections, all duly qualified electors shall be permitted to vote in municipal elections at such voting place if such electors are authorized to vote at any voting precinct within such city or town.

HISTORY: 1962 Code § 23-211.1; 1952 Code § 23-118; 1951 (47) 78, 229.

Cross references—

As to voting in city of Anderson, see § 7-7-80.

Research and Practice References—

26 Am Jur 2d, Elections §§ 228, 229.
29 CJS, Elections § 199.

ATTORNEY GENERAL'S OPINIONS

Under §7-7-10 and §5-15-50 South Carolina Code of Laws, 1976, the General Assembly is the only authority which should draw ward lines for voting purposes; municipalities can draw ward lines pursuant to §5-15-50, South Carolina Code of Laws, 1976, for other than election purposes; if the General Assembly fails to designate a voting place another authority may designate the voting place; municipalities can not be able to pool all the precincts in municipality for municipal election. 1978 Op Att'y Gen., No 78-70, p. 99.

Constitutionality of last paragraph. — The last paragraph of this section would allow municipalities to combine their precincts into one precinct; and therefore, all persons to vote in a voting place not

necessarily within their own precinct. This conflicts with the requirement of S.C. Const., Art II, § 4 that every person vote . . . "in the precinct of his residence and not elsewhere. . ." 1978 Ops. Att'y Gen. No. 78-70, p. 99.

A person who does not live within the municipality but owns a business within the municipality would not be considered a resident for the purpose of voting in a municipal election. Op. Atty. Gen. to Hon. Martin Sauls, Jan. 31, 1977.

Persons on the fringe areas of the Loris City limits who pay city taxes and receive city services but who do not live within the city limit cannot vote in the municipal election. Op. Atty. Gen. to Mr. Carroll D. Padgett, Jr., Nov. 17, 1977.

§ 7-7-940. Procedure upon removal of elector from one precinct to another.

In case of the moving of a registered elector from one precinct to another in the same county the elector must notify the board of registration of the county. The board must note the fact upon the proper book and give the elector a notification of the precinct into which he is moved.

HISTORY: 1962 Code § 23-215; 1952 Code § 23-215; 1950 (46) 2059; 1984 Act No. 510.

Cross reference—

As to procedure for computing of time when the last day of the period is a Saturday, Sunday or legal holiday see §15-1-20.

§ 7-7-950. Procedure where new precinct is established.

When a new voting precinct is established by law, the board of registration must transfer from the books of registration the names of electors registered to vote in other voting precincts as should register and vote in the new voting precinct and shall notify electors of the change of polling precincts.

HISTORY: 1962 Code §23-216; 1952 Code §23-216; 1950 (46) 2059; 1984 Act. No. 510.

§ 7-7-960. Procedure upon change of ward or precinct boundaries; effect of annexation of part of county to municipality divided into wards.

“(a) Any elector whose precinct or ward is changed by a change of ward or precinct boundaries must have notification mailed to him by the county registration board reflecting his new precinct or ward.

(b) Any area in the county annexed to municipality which is divided into wards shall be made part of a ward to which it is contiguous by the county board of registration. In the event the annexed area in a municipality divided into wards contains at least five hundred qualified electors the area annexed shall be made a separate ward which must be given a numerical designation. As soon as practicable following annexation, the board must mail all registered electors of record residing in the annexed area notification designating the number of the ward, if appropriate, and precinct to which they have been assigned.

(c) The envelope in which notifications mailed out in conjunction with the provisions of subsections (a) and (b) must have printed on the front ‘DO NOT FORWARD’. All electors whose precinct or ward is changed by boundary changes must be added to the records of the precinct or ward to which they are assigned and deleted from those of the precinct or ward to which they were formerly assigned.”

HISTORY: 1962 Code § 23-193.2; 1975 (59) 635. 1984 Act No. 510

ATTORNEY GENERAL'S OPINIONS

Costs of implementing new precinct boundaries. — The County of Aiken is responsible for paying the costs and expenses incurred, or to be incurred, by the Board of Registration of Aiken County in implementing the new voting precinct boundaries which were established by Section 1 of Act No. 637 of the 1978 Acts and Joint Resolutions, page 1832 (see § 7-7-40). Op. Att’y Gen. to Hon. William E. Knotts, Jr., March 27, 1979.

Effect of annexation upon Greenville County precincts. — By using the city limits of Fountain Inn as the boundary of Greenville County Precinct 78 rather than actually describing the geographic boundaries, the General Assembly must

have intended to allow this precinct to change with the limits of the city. Thus, the annexation of an area consisting of a portion of Precinct 79 would result in the area becoming part of Precinct 78 by reason of the definition in § 7-7-280, and the electors in the area should be mailed new registration certificates pursuant to this section. Op. Att’y Gen. to Ms. Nelle G. Power, Sept. 21, 1979.

When an annexation and resulting change in the precinct boundary geographically separated a portion of a precinct from the remainder thereof, the separated portion remained with the precinct even though they were not contiguous. Op. Att’y Gen. to Ms. Nelle G. Power, Sept. 21, 1979.

§ 7-7-970. Change of location of voting place or name of precinct.

When one voting place has been changed to another in the same township or polling precinct, or when the name of the voting place has been changed since the last general election, the registration of electors for the former voting place shall be valid and effectual for the new voting place.

HISTORY: 1962 Code § 23-217; 1952 Code § 23-217; 1950 (46) 2059.

ATTORNEY GENERAL'S OPINIONS

This section [Code 1962 § 23-217] has reference to established voting places. 1963-64 Ops. Att'y Gen., No 1738, p 234.

tion of an additional polling place within a precinct except by statutory authorization 1963-64 Ops. Att'y Gen., No 1738, p 234.

There is no authority for the crea-

§ 7-7-980. Registration of officers and their spouses temporarily residing at capital or county seat.

Federal, State and county officers and their spouses temporarily residing at or near the capital or county seat may register and vote in their former home precincts if they so desire.

HISTORY: 1962 Code § 23-218; 1952 Code § 23-218; 1950 (46) 2059; 1968 (55) 2693.

ATTORNEY GENERAL'S OPINIONS

A Federal or State employee may retain his place of residence in one county although he lives and works in another county; the prime test being

whether he intends to make the former place his permanent home. 1963-64 Ops. Att'y Gen., No 1760, p 272.

§7-7-990. Barrier-free polling places for physically handicapped electors; criteria and procedures for use.

A. Notwithstanding any other provision of law, the county election commission in each county of the State is encouraged to make every polling place barrier free and shall provide at least one polling place, free of architectural barriers, which shall be known as the Countywide Barrier-Free Voting Precinct, for use by physically handicapped electors of the county. Such polling place may be within any existing polling place that now is barrier-free or that is made barrier-free. Any physically handicapped elector, regardless of his place of residence in the county, may vote in this polling place if he meets the following criteria:

(1) Elector either cannot ambulate without the aid of a wheelchair, leg braces, crutches or a walker, or elector suffers from a lung disease to such an extent that he is unable to walk without the aid of a respirator.

(2) Elector has applied in writing to and obtained from the county board of registration thirty days prior to the election a voting registration transfer authorizing the elector to vote at the county barrier-free polling place.

B. For every election the State Election Commission shall furnish to the proper county or party officials a separate roster of those handicapped electors registered to vote at the barrier-free polling place, and the county election officials shall ensure that election managers are designated to staff the barrier-free polling place. Such roster shall also contain appropriate precinct and district references for each voter when practical and reasonable.

C. The county election commission shall be authorized to use paper ballots in lieu of voting machines in the Countywide Barrier-Free Voting Precinct in those counties where voting machines are used.

D. When the Countywide Barrier-Free Voting Precinct in the respective counties closes, the votes of the Countywide Barrier-Free Voting Precinct shall be tabulated and reported as a separate precinct when other ballots of the county are counted on election day.

E. The provisions of this section shall only apply to elections conducted by the county election commission or county executive committee of a political party and are in lieu of voting by absentee ballot.

HISTORY: 1982 (62) 2185.

CHAPTER 9

Party Organization

Sec.

- 7-9-10. Certification of political parties.
- 7-9-20. Qualifications for party membership and voting in primary election.
- 7-9-30. Party clubs; title, organization, officers, and committees.
- 7-9-40. Party club membership and activities; membership lists; one voting place per club; absentee voting.
- 7-9-50. Meetings of clubs.
- 7-9-60. County committees.
- 7-9-70. County conventions; notice, time and delegates.
- 7-9-80. County conventions; organization and conduct of business.
- 7-9-90. State committee.
- 7-9-100. State convention.
- 7-9-110. County party election commission

§ 7-9-10. Certification of political parties.

Political parties desiring to nominate candidates for offices to be voted on in a general or special election shall, before doing so, have applied to the State Election Commission (Commission) for certification as such. Parties shall nominate candidates of that party on a regular basis, as provided in this title, in order to remain certified. Any certified political party that fails to organize on the precinct level as provided by Section 7-9-50, hold county conventions as provided by Sections 7-9-70 and 7-9-80, and hold a state convention as provided by Section 7-9-100; that fails to nominate candidates for national, state,

multi-county district, countywide, or less than countywide office by convention or party primary as provided by Sections 7-11-20, 7-11-30, and 7-13-40; and that fails to certify the candidates as provided by Section 7-13-350 in at least one of two consecutive general elections held on the first Tuesday following the first Monday in November of an even-numbered year, or that fails to nominate and certify candidates in any other election which might be held within the period of time intervening between the two general elections, must be decertified by the State Election Commission. The party must be notified in writing of its decertification at the last address of record. If the notification of decertification is returned as undeliverable, it must be placed on file in the office of the State Election Commission and with the Secretary of State.

Any decertified party or any noncertified party, organization, or association may obtain certification as a political party at any time by filing with the Commission a petition for the certification signed by ten thousand or more registered electors residing in this State, giving the name of the party, which must be substantially different from the name of any other party previously certified.

No petition for certification may be submitted to the Commission later than six months prior to any election in which the political party seeking certification wishes to nominate candidates for public office.

At the time a petition is submitted to the Commission for certification, the Commission shall issue a receipt to the person submitting the petition which reflects the date the petition was submitted and the total number of signatures contained therein. Once the petition is received by the Commission, the person submitting the petition shall not submit or add additional signatures.

If the Commission determines, after checking the validity of the signatures in the petition, that it does not contain the required signatures of registered electors, the person submitting the petition must be notified and shall not submit any new petition seeking certification as a political party under the same name for one year from the date the petition was rejected.

Once a petition for certification has been submitted and rejected by the Commission, the same signatures may not be submitted in any subsequent petition to certify a new political party.

Once submitted for verification, a petition for certification may not be returned to the political party, organization, or association seeking certification, but shall become a part of the permanent records of the Commission.

HISTORY: 1962 Code § 23-251; 1952 Code § 23-251; 1950 (46) 2059; 1974 (58) 2866; 1984 Act No. 263; 1986 Act No. 346.

Research and Practice References—

25 Am Jur 2d, Elections § 117.

29 CJS, Elections § 84.

Cross references—

As to ballot standards and specifications with respect to presidential electors, see § 7-13-320.

As to the filing of the names of candidates for electors of President and Vice President with the Secretary of State, see § 7-19-70.

CASE NOTES

The election laws of South Carolina were revised during the 1968 Session of the legislature to become effective January 1, 1969. *United Citizens Party v South Carolina State Election Comm'n*, 319 F Supp 784 (DSC 1970).

This revision created a new agency, the State Election Commission. *United Citizens Party v South Carolina State*

Election Comm'n, 319 F Supp 784 (DSC 1970).

And transferred to it most of the duties formerly imposed on the Secretary of State with regard to elections. *United Citizens Party v South Carolina State Election Comm'n*, 319 F Supp 784 (DSC 1970).

§ 7-9-20. Qualifications for party membership and voting in primary election.

The qualifications for membership in a certified party and for voting at a party primary election include the following: The applicant for membership, or voter, must be at least eighteen years of age or become so before the succeeding general election, must be a registered elector and a citizen of the United States and of this State. No person may belong to any party club or vote in any primary unless he is a registered elector. The state convention of any political party, organization, or association in this State may add by party rules to the qualifications for membership in the party, organization, or association and for voting at the primary elections if such qualifications do not conflict with the provisions of this section or with the Constitution and laws of this State or of the United States.

HISTORY: 1962 Code § 23-253; 1952 Code § 23-253; 1950 (46) 2059; 1970 (56) 1899; 1974 (58) 2866; 1984 Act No. 510.

Research and Practice References—

25 Am Jur 2d, Elections §§ 118,119,158 et seq.

§ 7-9-30. Party clubs; title, organization, officers, and committees.

One party club may be organized in each general election voting precinct provided for by law and each of such clubs shall have a distinct title: "The _____ Club of the _____ Party." Each such club shall elect a president and one or more vice-presidents, a secretary and treasurer, a precinct or club secretary and a district executive committeeman and may have such working committees as to it may seem expedient.

In the absence of the precinct or club district executive committeeman or in case of his inability to act, unless it is otherwise provided in the party rules, the club district executive committeeman shall designate another member of the club to perform his duties or the members of the club shall elect a club district executive committeeman to take his place.

The officers of the party club shall be reported to the clerk of court of the county prior to the county convention; any club which does not reorganize before the county convention but reorganizes thereafter as provided in § 7-9-50 shall report the names of its officers to the clerk of court within seven days. The reports shall be public record.

HISTORY: 1962 Code § 23-254; 1952 Code § 23-254; 1950 (46) 2059; 1964 (53) 1831.

§ 7-9-40. Party club membership and activities; membership lists; one voting place per club; absentee voting.

Members of a political party must belong to the club in the voting precinct set forth in their respective registration records. The poll list of the primary of the preceding primary election is the prima facie list of the members of each club for the purpose of club organization and the election of delegates to the county convention. There may not be more than one voting place for each club. Federal, state, and county officers temporarily residing at or near the capital or county seat may retain their membership and voting rights in their former home clubs. No person may take part in any club meeting, vote in any primary, or be elected a delegate to any county convention except in the club of the voting precinct set forth in his or her registration record.

HISTORY: 1962 Code § 23-255; 1952 Code § 23-255; 1950 (46) 2059; 1984 Act No. 510.

§ 7-9-50. Meetings of clubs.

The president and five members may call all special meetings of the club, except for reorganization, provided for in the succeeding paragraph. At least forty-eight hours' public notice of all special meetings must be given in a newspaper of general circulation in the area where the club is situated.

The clubs shall meet for reorganization at the usual place of meeting, at the time and on the day as determined by the county committee no later than two weeks prior to the county convention. A notice must be published by the county committee once a week for two consecutive weeks, not more than three weeks nor less than two weeks, before the meeting date in a newspaper having general circulation in the county. If any existing club fails to reorganize on the day fixed, the county

chairman may fix a day for the club to meet for reorganization by giving two weeks' notice.

HISTORY: 1962 Code § 23-256; 1952 Code § 23-256; 1950 (46) 2059; 1954 (48) 1447; 1974 (58) 2866; 1986 Act No. 327.

Related Local Laws—

For a local law pertaining to the time for reorganization meetings in York County, see Local Law Index.

ATTORNEY GENERAL'S OPINIONS

Reorganization of clubs.—State law does not contemplate complete reorganization of precinct clubs except during general election years. 1966-67 Ops. Att'y Gen., No 2247, p 54.

§ 7-9-60. County committees.

The clubs in each county shall be held together and operate under the control of a county committee, which shall consist of one member from each club to be elected by the club and shall also include the State Executive Committeeman from such county. The committee, when elected, shall appoint its own officers (except the chairman, who shall be elected by the county convention), who shall not necessarily be members of the committee. A vacancy in the membership of the committee shall be filled by the club through the loss of whose member by death, resignation or otherwise the vacancy occurs, except that if the office of the county chairman shall become vacant by death, resignation or otherwise, the committee may fill the vacancy by electing a chairman to serve until the organization of the next regular county convention. An officer of the county committee who is not a member of the committee shall not be entitled to vote on any question, except the chairman and then only in case of a tie vote. The tenure of office of the committee shall be until the day of the county convention in each general election year.

HISTORY: 1962 Code § 23-258; 1952 Code § 23-258; 1950 (46) 2059, 2442; 1954 (48) 1447; 1974 (58) 2866.

Research and Practice References—

25 Am Jur 2d, Elections §§ 123-125.
29 CJS, Elections §§ 85-87.

§ 7-9-70. County conventions; notice, time and delegates.

County conventions must be held during a twelve-month period ending March thirty-first of every general election year during a month determined by the state committee as provided in Section 7-9-100. The county committee shall set the date, time, and location during the

month designated by the state committee for the county convention to be held; however, the date set by the county committee for the county convention must be at least two weeks prior to the state convention. When a month in a nongeneral election year is chosen for the county convention, it must be held for the purpose of reorganization only. The date, time, and location that the county convention must be reconvened during the general election year to nominate candidates for public office to be filled in the general election must be set by county committee. Notices, both for the convention to be held for reorganization and for the reconvened convention to nominate candidates, must be published by the county committee, once a week for two consecutive weeks, not more than three nor less than two weeks, before the day in a newspaper having general circulation in the county. The convention must be composed of delegates elected from the clubs in the county, one delegate for every twenty-five members and major fraction thereof, based upon the number of votes polled in the first primary of the preceding general election year or based upon the number of votes for presidential electors at the last preceding general election therefor from the precinct as determined by the state committee. The same basis must be used in all precincts; or if the last preceding nominations were by convention, the representation must be based upon the number of votes for presidential electors at the last preceding general election therefor from the precinct. The list of delegates certified to by the president and secretary of each club shall constitute the temporary roll of the county convention. Where new precincts have been created or where the areas of precincts have been redefined, the party executive committee of the affected counties shall apportion delegates from the clubs representing the precincts.

HISTORY: 1962 Code § 23-259; 1952 Code § 23-259; 1950 (46) 2059; 1954 (48) 1447; 1964 (53) 1831; 1968 (58) 2349; 1974 (58) 2866; 1976 (59) 1465; 1977 (60) 261; 1979 (61) 363; 1986 Act No. 327.

ATTORNEY GENERAL'S OPINIONS

Election of delegates to the county convention where last preceding method of nomination was by primary election. 1969-70 Ops. Att'y Gen., No. 2844, p. 75. III, Feb. 16, 1982.

This section provides that the date for

the county convention will be determined by each county executive committee. Op. Atty. Gen. to Hon. C. Alexander Harvin, III, Feb. 16, 1982.

§ 7-9-80. County conventions; organization and conduct of business.

Each county convention shall be called to order by the county chairman and shall proceed to elect a temporary president, a temporary secretary and a committee on credentials for the purpose of organizing. When organized, it shall elect a permanent president, a secretary and treasurer. It shall also elect the county chairman, the county vice-chairman and a member of the State

committee from the county and as many delegates to the State convention as triple the number of members from the county in the House of Representatives, plus one. But county conventions at their discretion may elect double the number of delegates in which case each delegate shall have one-half vote. The secretary of the convention shall keep a record of the proceedings in the minute book.

All officers except delegates shall be reported to the clerk of court of the county and to the Secretary of State prior to the State convention. The reports shall be public record.

HISTORY: 1962 Code § 23-260; 1952 Code § 23-260; 1950 (46) 2059; 1964 (53) 1831; 1968 (55) 2349.

Research and Practice References—
29 CJS, Elections §§ 101, 102.

§ 7-9-90. State committee.

The State committee shall be composed of one member from each county, to be elected by the county conventions, and the State chairman and State vice-chairman, to be elected by the State convention. Those persons named as members of the national executive committee of a national party shall be ex officio members of the State committee. If the office of State chairman or State vice-chairman shall become vacant by death, resignation or otherwise, the State committee may fill the vacancy by electing a chairman or vice-chairman to serve until the organization of the next regular State convention. The State committee shall choose its other officers, not necessarily members thereof. The State chairman shall vote only in case of a tie. The State committee shall meet at the call of the State chairman or any five members and at such time and place as he may appoint. Vacancies on the State committee other than in the offices of State chairman and State vice-chairman, however occurring, shall be filled by the respective county committees. The members of the State committee shall continue in office for two years from the time of their election, and until their successors have been elected. The State committee shall nominate presidential electors and any vacancy in the State ticket of electors or in the national committee of a party, however occurring, shall be filled by the State committee; all by a majority of the whole committee.

HISTORY: 1962 Code § 23-261; 1952 Code § 23-261; 1950 (46) 2059; 1960 (51) 1612.

Research and Practice References—
25 Am Jur 2d, Elections §§ 123-125.
29 CJS, Elections §§ 85-87.

ATTORNEY GENERAL'S OPINIONS

This section does not prohibit vice-chairpersons from voting. Op. Atty. Gen. to Hon. John C. Land, April 12, 1976.

§ 7-9-100. State convention.

The state convention shall meet at Columbia during a twelve-month period ending April fifteenth of every general election year on a day and at a time fixed by the state committee and announced publicly at least ten days before the meeting. Should the state committee fix the date for the state convention in a nongeneral election year, it must be held for the purpose of reorganization only. The convention to be held for the purpose of nominating candidates for public office to be filled in the general election must be held in the general election year. At the time that the state committee sets the date for the state convention it shall set what month during the twelve month period ending March thirty-first of every general election year that the county convention must be held. If it sets a month in a nongeneral election year for the county conventions to be held for the purpose of reorganization, it must also set a month during the general election year for the county convention to be reconvened for the purpose of nominating candidates for public office to be filled in the general election. Sufficient advance notice of the month set for county conventions must be given to county executive committees so that the public notices required by law may be met. The convention must be composed of delegates elected by the county conventions, each county is entitled to one delegate for each six thousand residents of the county, according to the latest official United States Census, plus two additional members. If a county has fractional portion of population of at least three thousand residents above its last six thousand resident figure it is entitled to an additional delegate. When the state convention assembles, it must be called to order by the chairman of the state committee. A temporary president must be nominated and elected by the convention, and after its organization the convention shall proceed immediately to the election of permanent officers and to the transaction of business. When the business has concluded it shall adjourn sine die, or may recess. But the state chairman may recall the state convention into special session at any time he determines appropriate.

The officers of the state convention must be a president, vice president, two secretaries, and a treasurer. Each county delegation to a state convention may fill any vacancies therein. Any county failing or refusing to organize under the provisions of this title may not have representation in the state convention. The state officers must be reported to the Secretary of State and to the State Election Commission within fifteen days of their election and the reports must be public record.

HISTORY: 1962 Code § 23-262; 1952 Code § 23-262; 1950 (46) 2059; 1954 (48) 1447; 1964 (53) 1831; 1974 (58) 2866; 1976 (59) 1448; 1977 (60) 262; 1986 Act No. 327.

Cross references—

As to county conventions doubling the number of delegates, see § 7-9-80.

Research and Practice References—

25 Am Jur 2d, Elections §§ 164-167.
29 CJS, Elections §§ 97 et seq.

CASE NOTES

Applied in State ex rel. Thornton v Wannamaker, 248 SC 421, 150 SE2d 607 (1966).

§ 7-9-110 County party election commission

The county committee may by majority vote establish a county party election commission to consist of not less than five members nor more than nine members who shall be appointed by the county committee to conduct the primaries of the party in the county. Such commissioners when appointed shall hold office until ninety days prior to the next general or special primary election (runoffs following a primary shall not be considered another general or special primary).

The county party election commission has all the rights and powers of the county committee to conduct the primary election in accordance with the provisions of this title and in accordance with the party rules not in conflict with any provision of law except that the county party election commission may not perform those duties and responsibilities regarding protests and contests as provided in Sections 7-17-520 through 7-17-590.

HISTORY: 1984 Act No. 260.

CHAPTER 11

Designation and Nomination of Candidates

ARTICLE 1. Methods of Nomination.

ARTICLE 3. Notice of Candidacy; Candidate's Pledge and Affidavits.

ARTICLE 5. Assessment of Candidates.

ARTICLE 1

METHODS OF NOMINATION

SEC.

7-11-10. Methods of nominating candidates.

7-11-20. Conduct of party conventions or party primary elections generally.

7-11-30. Convention nomination of candidates.

- 7-11-40. Names and addresses of candidates for House of Representatives shall be reported to State Election Commission.
- 7-11-50. Substitution when party nominee dies, becomes disqualified or resigns candidacy for legitimate nonpolitical reason.
- 7-11-60. Permissible number of nominees for State Senator from any county.
- 7-11-70. Nomination by petition.
- 7-11-71. Nominating petitions: number of signatures required.
- 7-11-80. Form of nominating petition.
- 7-11-85. Nomination by petition.
- 7-11-90. Unopposed candidates.

§ 7-11-10. Methods of nominating candidates.

Nominations for candidates for the offices to be voted on in a general or special election may be by political party primary, by political party convention or by petition; *provided*, no person who was defeated as a candidate for nomination to an office in a party primary or party convention shall have his name placed on the ballot for the ensuing general or special election, except that this proviso shall not prevent a defeated candidate from later becoming his party's nominee for that office in that election if the candidate first selected as the party's nominee dies, resigns, is disqualified, or otherwise ceases to become the party's nominee for such office before the election is held.

HISTORY: 1962 Code § 23-263; 1952 Code § 23-263; 1950 (46) 2059; 1982 (62) 2470.

Effect of Amendments—

The 1982 amendment added the provision at the end of the section.

Cross references—

- As to nominations, generally, see SC Const, Art 2, § 6.
- As to the right to be elected to fill public office, see SC Const, Art 1, § 5.
- As to nomination and election to municipal office, see §§ 5-15-10 to 5-15-150.
- As to campaign practices, see §§ 8-13-610 to 8-13-630.

Research and Practice References—

- 25 Am Jur 2d, §§ 144 et seq.
- 29 CJS, Elections §§ 97-103, 106 et seq.

ALR and L Ed Annotations—

- Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557.
- Fourteenth Amendment as affecting nomination or election to state office. 11 L Ed 2d 1057.
- Fourteenth Amendment as affecting nomination or election to state office—federal cases. 23 L Ed 2d 782.

CASE NOTES

Nomination contemplated under this Title is the result of a primary, convention, executive committee action or petition, and not of the general election. *Glasscock v Bradford*, 218 SC 458, 63 SE2d 166 (1951).

ATTORNEY GENERAL'S OPINIONS

The General Assembly has enacted special legislation for various school boards allowing candidates for school boards to only file a notice of candidacy with a designated office or board in order to be placed upon the ballot. Op. Atty. Gen. to Randolph Murdaugh, III, June 23, 1982.

Which of the two methods, primary or convention, a political party will use to nominate candidates for elective offices is a decision left to the party to make in accordance with the applicable statutes and party rules. Op. Atty. Gen. to Hon. Nancy Stevenson, July 28, 1981.

§ 7-11-20. Conduct of party conventions or party primary elections generally.

Party conventions or party primary elections held by political parties certified as such by the State Election Commission under the provisions of this Title to nominate candidates for any of the offices to be filled in a general or special election shall be conducted in accordance with the provisions of this Title and in accordance with party rules not in conflict with the provisions of this Title or of the Constitution and laws of this State or of the United States.

HISTORY: 1962 Code § 23-252; 1952 Code § 23-252; 1950 (46) 2059; 1974 (58) 2866.

ATTORNEY GENERAL'S OPINIONS

A straw vote "Presidential primary" in March is not a legally recognizable election procedure and has no more force or effect than the response to a telephone inquiry by a poll taker as to the Presidential choice of individuals. Op. Atty. Gen. to Mr. T. Allen Legare, Jr., Jan. 15, 1980.

Participation in the March "Presidential Primary" will not affect subsequent participation in any regularly scheduled primary conducted in accordance with South Carolina law. Op. Atty. Gen. to Mr. T. Allen Legare, Jr., Jan. 15, 1980.

§ 7-11-30. Convention nomination of candidates.

If a party nominates candidates by conventions, the state convention shall nominate the party's candidate for Governor, Lieutenant Governor, and all other statewide officers and United States Senators, members of Congress, and circuit solicitors, and the county conventions shall nominate the party's candidates for all county offices. No convention shall make nominations for candidates for offices unless the decision to use the convention method is reached by a three-fourths vote of the total membership of the convention, except the office of state Senator and of member of the House of Representatives. The nomination of the

party's candidates for the office of state Senator and of member of the House of Representatives must be made in the manner determined by the state committee. If a party determines that nomination for the office of state Senator and of member of the House of Representatives must be by convention, these nominations must be made by the state convention. No convention shall make nominations for one or more offices at the convention and order primaries for other offices to be filled during the same election year. Conventions for political parties not nominating candidates in primaries may be called by state and county committees and other dates than those given in this title for conventions after three weeks published notices of recalls. Any political party nominating candidates by party convention shall nominate the party candidates and make the nominations public not later than the time for certifying candidates to the authority charged by law with preparing ballots for the general or special election.

HISTORY: 1962 Code § 23-264; 1952 Code § 23-264; 1950 (46) 2059; 1964 (53) 1744; 1966 (54) 2093; 1968 (55) 2316; 1972 (57) 2531; 1974 (58) 2124; 1984 Act No. 403.

Cross references—

As to placing names of certified nominees on ballots, see § 7-13-350.

As to nominations for municipal offices, see §§ 5-15-10 to 5-15-150.

Research and Practice References—

25 AM Jur 2d, Elections §§ 164-167.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 38 (objection to certificate of nomination).

ATTORNEY GENERAL'S OPINIONS

[A number of the opinions of the Attorney General cited below were rendered prior to amendments which restated this section.]—

Nominations for Senate using convention method in multiple-county districts need not be ratified by State convention. 1965-66 Ops. Att'y Gen., No 1994, p 52.

Procedure followed after withdrawal of a candidate.—The procedure to be followed on withdrawal of a candidate is the same procedure to be followed as in the original method of nomination. 1965-66 Ops. Att'y Gen., No 2035, p 111.

If a nominee for the office of State Senator of a party not using the primary method should withdraw, the State committee of the party may make nominations of the party's candidates

in such manner as the committee may determine. 1965-66 Ops. Att'y Gen., No 2035, p 111.

As to time limitation in connection with special election to fill a vacancy created by the resignation of a State Senator, see 1966-67 Ops. Att'y Gen., No 2306, p 125.

Failure to select candidate after decision to nominate by convention.—

A county convention which met on the statutory date and decided to nominate by convention but did not select any candidate and then reconvened after the State convention could not reverse its earlier decision to nominate by convention. 1973-74 Op. Att'y Gen., No. 3719, p. 76.

Three-fourths of the total membership of the convention as used in Section

7-11-30, Code, should be read as meaning three-fourths of the entire membership that could have attended the convention. Op. Att'y Gen. to Hon. T. Moffatt Burriss, April 11, 1984.

In deciding whether the party will nominate by convention or by party primary the whole convention votes on the

question. Op. Atty. Gen. to Mr. William H. Grimboll, April 7, 1981.

Whatever method political party utilized to nominate a candidate for the general election year would not control the nominating procedures for the following year. Op. Atty. Gen. to Mr. John Monroe, Oct. 10, 1979.

§ 7-11-40. Names and addresses of candidates for House of Representatives shall be reported to State Election Commission.

Notwithstanding any other provision of law, if a political party in this State shall nominate candidates by party primary election, the person with whom candidates of that party for the House of Representatives file shall report to the State Election Commission the names and addresses of all candidates so filing within twenty-four hours after the close of the filing period for the House of Representatives.

HISTORY: 1962 Code § 23-265.4; 1974 (58) 2400.

§ 7-11-50. Substitution when party nominee dies, becomes disqualified or resigns candidacy for legitimate nonpolitical reason.

If a party nominee dies, becomes disqualified after his nomination or resigns his candidacy for a legitimate nonpolitical reason as defined in this section and sufficient time does not remain to hold a convention or primary to fill the vacancy or to nominate a nominee to enter a special election, the respective state or county party executive committee may nominate a nominee for such office, who shall be duly certified by the respective county or state chairman.

"Legitimate nonpolitical reason" as used in this section shall be limited to the following:

(a) Reasons of health, which shall include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he continued.

(b) Family crises, which shall include circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business.

(c) Substantial business conflict, which shall include the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his capability to properly carry out the functions of the office being sought.

Any candidate who withdraws based upon a "legitimate nonpolitical reason" which is not covered by the inclusions in (a), (b) or (c) shall have the strict burden of proof for his reason.

A candidate who wishes to withdraw for a legitimate nonpolitical reason shall submit his reason by sworn affidavit.

Such affidavit shall be filed with the state party chairman of the nominee's party and also with the election commission of the county if the office concerned is countywide or less including members of the General Assembly and with the State Election Commission if the office is statewide. No substitution of candidates shall be authorized, except for death or disqualification, unless the election commission to which the affidavit is submitted approves the affidavit as constituting a "legitimate nonpolitical reason" for the candidate's resignation within ten days of the date the affidavit is submitted to the commission. *Provided*, that where such a party nominee is unopposed each political party registered with the State Election Commission shall have the privilege of nominating a candidate for the office involved. If the event occurs forty-five days or more prior to the election such nomination must be certified not less than thirty days prior to the election. If the event occurs less than forty-five days prior to the election such office shall not be voted on until the first Tuesday in the month following such election and such nomination must be certified not less than fifteen days prior thereto.

HISTORY: 1962 Code § 23-266; 1952 Code § 23-266; 1950 (46) 2059; 1968 (55) 2316; 1978 (61) 1350.

Research and Practice References—

25 Am Jur 2d, Elections §§ 137-139.

29 CJS, Elections §§ 93 et seq.

ATTORNEY GENERAL'S OPINIONS

Withdrawal of candidate.—This section [Code 1962 § 23-266] and Code 1962 § 23-372 (now Code 1962 § 23-396), read together, authorize the substitution of a candidate upon the withdrawal of a prior candidate. 1965-66 Ops. Att'y Gen., No 2014, p 77.

Substitution where not more than two candidates for one office.—Where a candidate for office dies or withdraws, a party may nominate a substitute candidate if there are not more than two party candidates for any one office. 1965-66 Ops. Att'y Gen., No 2014, p 77.

This section is not applicable to withdrawals of candidacy by a party nominee if sufficient time remains to hold a convention or primary to fill the vacancy or to nominate a nominee to enter a special election. When sufficient time does

not remain to hold a primary or convention, the respective state or party executive committee may nominate nominees for the office. Op. Atty. Gen. to Mr. C. Heyward Belser, Sept. 7, 1978.

When one of two candidates died a week

before the election, sufficient time did not exist to allow other candidates to file for election and therefore, if any voters desire to vote for another candidate, they would have to use the write-in procedure. Op. Atty. Gen. to Mr. Herman E. Cox, Oct. 31, 1977.

It would appear that the proper body to make the determination of whether sufficient time exists for a primary to be held would be the political party itself as the party would be in the best position to deter-

mine pursuant to their rules and the applicable statutes if sufficient time exists. Op. Atty. Gen. to Mr. C. Heyward Belser, Aug. 27, 1980.

This section only authorizes a defeated primary candidate to offer again as a candidate to offer again as a candidate if the party nominee dies or becomes disqualified and not when the party nominee withdraws for a legitimate nonpolitical reason. Op. Atty. Gen. to Mr. W. Brantley Harvey, Jr., Oct. 1, 1982.

§ 7-11-70. Nomination by petition.

A candidate's nominating petition for any office in this State shall contain the signatures of at least five percent of the qualified registered electors of the geographical area of the office for which he offers as a candidate; *provided*, that no petition candidate is required to furnish the signatures of more than ten thousand qualified registered electors for any office. The official number of qualified registered electors of the geographical area of any office must be the number of registered electors of such area registered one hundred twenty days prior to the date of the election for which the nomination petition is being submitted.

The petition shall be certified to the State Election Commission in the case of national, State, circuit and multicounty district offices; with the county election commission in the case of county-wide or less than countywide offices with the exception of municipal offices; with the clerk of a municipality in case of a municipal office, and the certified petition shall constitute and be kept as a public record.

HISTORY: 1962 Code § 23-400.16; 1952 Code § 23-313; 1950 (46) 2059; 1956 (49) 1739; 1961 (52) 548; 1964 (53) 1744; 1966 (54) 2340; 1968 (55) 2316; 1972 (57) 2531; 1974 (58) 2124,2866; 1984 Act. No. 405.

Cross references —

As to applicability of this section to nominations for nonpartisan preferential elections for selection of magistrates, see § 22-2-10.

Research and Practice References—

25 Am Jur 2d, Elections §§ 168-173.

29 CJS, Elections §§ 106-110.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 92 (notice of nomination by petition).

CASE NOTES

The power granted to chairmen of political parties which hold primary elections, to prevent defeated candidates from campaigning or offering the ensuing

general election is not an unconstitutional delegation of state power to a private citizen. *White v. West*, 74-1709 (D.S.C. 1976).

The purpose of Sec. 7-11-210 is to prevent a primary candidate who has appealed to the entire electorate in seeking his party's nomination and lost to again appeal to the entire electorate as a candidate in the general election. This effort to protect the integrity of the ballot is commendable, and necessary to prevent confusion.

White v. West, No. 74-1709 (D.S.C. 1976).

This section requires only that a petition candidate have the signatures of five percent (5%) of the registered electors of the geographic district sought to be represented. *French v. Pearlman*, U.S.D.C. (SC 1979).

ATTORNEY GENERAL'S OPINIONS

Signatures not presumed valid. — The signatures on a petition for nomination as a candidate which are submitted to the appropriate election commission are not presumed under law to be the valid signatures of qualified registered electors. It is necessary for the signatures and the other required information to be checked. Op. Att'y Gen. to Mr. James B. Ellisor, Sept. 22, 1978.

Procedure for confirming signatures. — The election authority must undertake some reasonable and reliable procedure to confirm that the petitions for nomination comply with the statutory requirements with regard to signatures. However, the form of the procedure is within the discretion of the election authority. Op. Att'y Gen. to Mr. James B. Ellisor, Sept. 22, 1978.

The procedures utilized by the commission in executing its statutory duty of reviewing petitions under Title 7 should be selected on a case by case

method taking into account the factors affecting reasonableness and reliability. Op. Att'y Gen. to Mr. James B. Ellisor, Sept. 25, 1978.

Defeated primary candidate still may not run. — While it is true that *Toporek v. South Carolina State Election Comm'n*, 362 F. Supp. 613 (D.S.C. 1973) invalidated the prior provision of this section that had prohibited a defeated primary candidate from being placed on the general election ballot, § 7-11-210 is still a part of the election code, and still prohibits a defeated primary candidate from offering or campaigning in the general election. Op. Att'y Gen. to Hon. Claudia W. Howard, July 25, 1980.

Petition signatures of persons who were deleted from the registration rolls before the petitions were circulated because of their voting records may not be counted. Op. Atty. Gen. to Mr. Melvin B. McKeown, Jr., Aug. 21, 1980.

§ 7-11-71. Nominating petitions; number of signatures required.

Notwithstanding the provisions of § 7-11-70, petitions to nominate candidates elected in the general election to serve as commissioners of public service districts shall require signatures of not less than two hundred fifty qualified electors of the district concerned or five percent of the total number of electors of the district, whichever is the lesser, if such petitions are otherwise in compliance with this chapter.

HISTORY: 1978 (60) 1747

Editor's Note —

This section is effective July 18, 1978.

ATTORNEY GENERAL'S OPINIONS

School districts not included. — This section speaks only of public service districts. Therefore, persons running for offices in school districts would not come within the provisions of this section. Op. Att'y Gen. to L. Paul Barnes, April 18, 1979.

§ 7-11-80. Form of nominating petition.

All nominating petitions for any political office or petition of any political party seeking certification as such in the State of South Carolina shall be standardized as follows:

(1) Shall be on good quality original bond paper sized 8½" X 14".

(2) Shall contain a concise statement of purpose; in the case of nomination of candidates, the name of the candidate, the office for which he offers and the date of the election for such office shall be contained in such petition.

(3) Shall contain in separate columns from left to right the following:

- (a) Signatures of voters and printed name of voter;
- (b) Address of residence where registered; and
- (c) Precinct of voter.

(4) No single petition page shall contain the signatures of registered voters from different counties.

(5) All signatures of registered voters shall be numbered consecutively.

(6) Petitions with more than one page must have the pages consecutively numbered upon filing with the appropriate authority.

The State Election Commission may furnish petition forms to the county election officials and to interested persons.

HISTORY: 1962 Code § 23-400.16:1; 1974 (58) 2866; 1984 Act. No. 510.

Cross references —

As to applicability of this section to nominations for nonpartisan preferential elections for selection of magistrates, see § 22-2-10.

Research and Practice References—

- 25 Am Jur 2d, Elections §§ 168-173.
- 29 CJS, Elections §§ 106-110.

ATTORNEY GENERAL'S OPINIONS

(1) The County Election Commission is the determining authority as to the legality of a county petition; (2) Section 23-400.16:1 [1976 Code § 7-11-80] is to be used in processing Home Rule Act petitions. 1976-77 Op. Atty. Gen. No. 77-145, p 121.

In all cases other than a petition nominating presidential electors, it would be necessary to have a separate petition for each office, Op. Atty. Gen. to Mr. James B. Ellisor, Nov. 6, 1981.

§ 7-11-85 Nomination by Petition

Every signature on a petition requiring five hundred or less signatures must be checked for validity by the respective county board of voter registration against the signatures of the voters on the original applications for registration on file in the registration board office. When a petition requires more than five hundred signatures, every one of the first five hundred signatures must be checked for validity and at least one out of every ten signatures thereafter beginning with the five hundred and first signature must be checked for validity. If the projected number of valid signatures, using this percentage method for the signatures over five hundred plus the number of valid signatures in the first hundred, total at least the number of signatures required by law on the petition, it must be certified as a valid petition. No petition, however, may be rejected if the number of signatures over five hundred checked using the percentage method plus the number of valid signatures in the first five hundred does not total at least the number required by law. If insufficient signatures are found using the percentage method in order to certify it as a valid petition, the board of voter registration must check every signature over five hundred separately, or such number over five hundred until the required number of valid signatures is found.

If it is a petition seeking to certify a new political party or if the office for which the petition has been submitted comprises more than one county, and using the percentage method of checking does not result in the required number of valid signatures, the executive director of the Commission shall designate which counties must check additional signatures.

No signatures on a petition may be rejected if the address of a voter, registration certificate number of a voter, or the precinct of a voter, as required by Section 7-11-80, is missing or incorrect if the signature is otherwise valid. The signature of a voter may only be rejected if it is illegible and cannot be found in the records of the board of voter registration, is missing from the petition, or is not that of the voter, or if the registration of the voter has been deleted for any of the reasons named in items (2) or (3) of Subsection (C) of Section 7-3-20.

The board of voter registration shall complete a summary form containing the results of checking any petition and must give the completed

form to the requesting authority. The form used for this purpose must be prescribed and provided by the executive director.

HISTORY: 1984 Act 263.

ATTORNEY GENERAL'S OPINIONS

Petition signatures of persons who were deleted from the registration rolls before the petitions were circulated because their voting records may not be counted. *Op. Atty. Gen. to Mr. Melvin B. McKeown, Jr., Aug. 21, 1980.* A woman whose name appears on the registration list under her maiden name but has since married and changed her name would not be denied the right to vote. *Op. Atty. Gen. to Mr. John K. deLoach, Jr., Oct. 13, 1976.*

Petitions filed with an election authority are not presumed to be valid, and the election authority must undertake some reasonable and reliable procedure to confirm that the petitions comply with the statutory requirements. *Op. Atty. Gen. to Mr. James B. Ellisor, Sept. 22, 1978.* The form of the confirming procedure is within the discretion of the election authority. *Op. Atty. Gen. to Mr. James B. Ellisor, Sept. 22, 1978.*

§ 7-11-90. Unopposed candidates.

After the closing of entries if any candidates shall be unopposed, the State committee in the case of State offices and the county committees in the case of county offices shall declare such unopposed candidates as party nominees, and the names of unopposed candidates shall not be placed upon the primary election ballots but shall be certified for the general election ballots.

HISTORY: 1962 Code § 23-400.76; 1952 Code § 23-375; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

29 CJS, Elections § 111(3).

Attorney General's Opinion

An unopposed candidate in a primary must file a Campaign Disclosure Form within thirty days after the primary. *Op. Atty. Gen., No. 82-47, p.53.*

ARTICLE 3

NOTICE OF CANDIDACY; CANDIDATE'S PLEDGE AND

SEC.

AFFIDAVITS

7-11-210. Notice of candidacy and pledge.

7-11-220. Notice or pledge by candidates for State Senator.

§ 7-11-210. Notice of candidacy and pledge.

Every candidate for selection as the nominee of any political party for any State office, United States Senator, member of Congress or solicitor, to be voted for in any party primary election, shall file with

and place in the possession of the treasurer of the State committee by twelve o'clock noon on April thirtieth a notice or pledge in the following form, the blanks being properly filled in and the notice or pledge signed by the candidate: "I hereby file my notice as a candidate for the nomination as in the primary election to be held on I affiliate with the Party, and I hereby pledge myself to abide by the results of the primay and I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for any such office has become deceased or otherwise disqualified for election in the ensuing general election."

Every candidate for selection in a primary election as the nominee of any political party for member of the Senate, member of the House of Representatives and all county and township offices shall file with and place in the possession of the county chairman or such other officer as may be named by the county committee of the county in which they reside by twelve o'clock noon on March thirtieth a like notice and pledge.

The notice of candidacy required by this section to be filed by a candidate in a primary must be signed personally by the candidate, and such signature of the candidate must be signed in the presence of the county chairman or such other officer as may be named by the county committee with whom such candidate is filing, or a candidate must have his signature on the notice of the candidacy acknowledged and certified by any officer authorized to administer an oath. Any notice of candidacy of any candidate signed by an agent in behalf of a candidate shall not be valid.

In the event that a person who was defeated as a candidate for nomination to an office in a party's primary election shall thereafter offer or campaign as a candidate against any nominee for election to any office in the ensuing general election, the State chairman of the party which held such primary (if the office involved is one voted for in the general election by the electors of more than one county), or the county chairman of the party which held such primary (in the case of all other offices), shall forthwith institute an action in a court of competent jurisdiction for an order enjoining such person from so offering or campaigning in the general election, and the court is hereby empowered upon proof of such facts to issue such order.

HISTORY: 1962 Code § 23-400.72; 1952 Code § 23-373; 1950 (46) 2059; 1964 (53) 1778; 1966 (54) 2093, 2340; 1968 (55) 2277; 1974 (58) 2124; 1977 (60) 261.

Cross references—

As to filing notice of candidacy and pledge required by this section, see § 7-11-250.

As to holding of county conventions and State convention, see §§ 7-9-70 and 7-9-100.

Research and Practice References—

25 Am Jur 2d, Elections § 155.

29 CJS, Elections § 114.

CASE NOTES

Purpose. — It is obvious from a review of this section that its purpose is to prevent a primary candidate who has appealed to the entire electorate in seeking his party's nomination and lost to against appeal to the entire electorate as a candidate in the general election. This effort to protect the integrity of the ballot is commendable, and necessary to prevent confusion. *White v. West*, No. 74-1709 (D.S.C. 1976).

Constitutionality. — This section does not violate the constitutional rights of freedom of association, freedom of assembly and the right to petition for redress of grievances. *White v. West*, No. 74-1709 (D.S.C. 1976).

There is no discrimination in the application of this section since the state party chairman or the county party chairman bringing the suit against the defeated primary candidate has no discretion in deciding whether the suit shall be brought. *White v. West*, No. 74-1709 (D.S.C. 1976).

This section is not a restriction upon the rights of the voters, since they may still write in the name of the defeated candidate if they so desire. *White v. West*, No. 74-1709 (D.S.C. 1976).

The right to petition for redress of grievances does not include the right of a defeated primary candidate to have his name appear on the general election ballot. *White v. West*, No. 74-1709 (D.S.C. 1976).

A state chairman of a recognized political party has standing to challenge this section, requiring him to

The power granted to chairmen of political parties which hold primary elections, to prevent defeated candidates from campaigning or offering in the ensuing general election is not an unconstitutional delegation of state power to a private citizen. *White v. West*, 74-1709 (D.S.C. 1976).

The fact that this section applies only to defeated primary candidates does not make it unconstitutional, since primary nomination is quite different from convention or petition nomination. *White v. West*, No. 74-1709 (D.S.C. 1976).

take action against a defeated primary candidate, who offers or campaigns for office in the general election. *White v. West*, No. 74-1709 (D.S.C. 1976).

Stated in *Vandross v Elliaor*, 347 F Supp 197 (DSC 1972).

Pledge does not effect eligibility of write-in candidate to win general election.—A candidate defeated in the primary election was not ineligible to win the general election as a "write-in" candidate because of the pledge taken as a candidate in the primary. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

A city may constitutionally refuse to accept an otherwise valid petition seeking to place the name of a defeated primary candidate on the general election ballot. *Backus v Spears* 677 F2d 397 (4th Cir. 1982)

ATTORNEY GENERAL'S OPINIONS

In all cases other than a petition nominating presidential electors, it would be necessary to have a separate petition for each office. Op. Atty. Gen. to Mr. James B. Ellisor Nov. 6, 1981.

Petition signatures of persons who were deleted from the registration rolls before the petitions were circulated because of their voting records may not be counted. Op. Atty. Gen. to Mr. Melvin B. McKeown, Jr., Aug. 21, 1980.

A candidate defeated in a primary election is prohibited from campaigning in the succeeding general election. 1969-70 Ops. Att'y Gen., No 3010, p 293.

While it is true that *Toporek v. South Carolina State Election Comm'n*, 362 F. Supp. 613 (D.S.C. 1973) invalidated the prior provision of § 7-11-70 that had prohibited a defeated primary candidate from being placed on the general election ballot, this section is still a part of the election code, and still prohibits a defeated primary candidate from offering or campaigning in the general election. Op. Att'y Gen. to Hon. Claudia W. Howard, July 25, 1980.

A candidate who registered to vote on the first available day in that the registration board was closed on Saturday and Sunday is still required to meet the 30 day registration requirement in order to be

qualified as of the time of the general election. Op. Atty. Gen. to Mr. William Myrick, Jr., Oct. 19, 1981.

An employee of a state agency who is not paid with federal funds or concerned with the implementation of a program supported in full or in part by federal funds, may retain his position as a state employee while a candidate for office in a partisan election. 1978 Op. Atty. Gen., No. 78-56, 80.

The thirty-day deadline requires that the candidate must be qualified as of the time of the general election. Op. Atty. Gen. to Hon. Larry Blanding, Mar. 26, 1980.

This section only authorizes a defeated primary candidate to offer again as a candidate if the party nominee dies or becomes disqualified and not when the party nominee withdraws for a legitimate non-political reason. Op. Atty. Gen. to Mr. W. Brantley Harvey, Jr., Oct. 1, 1982.

There is no prohibition against a defeated primary candidate being a write-in candidate if he does not campaign for the write-in vote. Op. Atty. Gen. to Mr. Robert D. Heilman, Aug. 28, 1980.

An active campaign for a write-in election by a disqualified candidate would still place the candidate in the position of violating his pledge. Op. Atty. Gen. to Hon. Patrick B. Harris, May 26, 1980.

§ 7-11-220. Notice or pledge by candidates for State Senator.

Every candidate for selection in a primary election as the nominee of a political party for the office of State Senator shall file with and place in the possession of the county chairman of the county in which he resides, or such other officer as may be named by the county committee of the county in which he resides, at the same time as those wishing to offer for nomination in such primary for county-wide or less than county-wide office, a notice or pledge as required by § 7-11-210.

HISTORY: 1962 Code § 23-400.73; 1966 (54) 2093, 2340. 3.15

Research and Practice References—

25 Am Jur 2d, Elections § 155.

29 CJS, Elections § 114.

CASE NOTES

Stated in *Vandross v Ellisor*, 347 F Supp 197 (DSC 1972).

ARTICLE 5

ASSESSMENT OF CANDIDATES

Sec.

7-11-410. Assessments payable by candidates.

7-11-420. Amounts and proration of assessments to be paid by candidates for State Senator in multi-county districts.

7-11-430. Amounts and proration of assessments to be paid by candidates for House of Representatives.

§ 7-11-410. Assessments payable by candidates.

The amounts of assessments to be paid by candidates at the time of the filing of the notice of candidacy shall be fixed as to each office by the State or county committee, as the case may be, with whom the notice and pledge has to be filed hereunder for such office. The county committee shall fix the assessment for the office of State Senator in all single-county districts.

HISTORY: 1962 Code § 23-400.74; 1952 Code § 23-374; 1950 (46) 2059; 1966 (54) 2093, 2340.

Research and Practice References—

25 Am Jur 2d, Elections § 182.

ALR and L Ed Annotations—

Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 864.

CASE NOTES

Reasonableness of filing fees. — The dimensions of reasonableness within which the State (or a political party acting under State authorization) may safely impose a filing fee are indeed low and narrow. *Culbertson v. Fowler*, No. 72-645 (D.S.C. 1974).

Filing fees imposed by party in 1972 democratic primaries held unreasonable, and fee of 2% of annual salary of office imposed by court. See *Culbertson v. Fowler*, No. 72-645 (D.S.C. 1974).

ATTORNEY GENERAL'S OPINIONS

The courts have not found filing fees to be unconstitutional as long as the fees are reasonable and as long as there is provided a reasonable alternative procedure for

persons to be placed on the ballot who are not able to pay the filing fee. Op. Atty. Gen. to Mr. E.P. Riley, Jr., June 15, 1983.

§ 7-11-420. Amounts and proration of assessments to be paid by candidates for State Senator in multi-county districts.

In multi-county senatorial districts, the amounts of assessments to be paid by candidates for the office of State Senator at the time and place of filing notwithstanding the provisions of § 7-11-410, shall be fixed by a majority of the county chairmen of the counties in the respective districts and shall be prorated among the county committees of the counties comprising the district in proportion to the number of precincts in each county. *Provided*, if such chairmen of any district fail to reach agreement within three days after the opening for entries the State executive committee shall fix the fee. *Provided, further*, that in 1966 only the chairmen shall have seven days in which to reach such agreement.

HISTORY: 1962 Code § 23-400.75; 1966 (54) 2093, 2340.

Research and Practice References—

25 Am Jur 2d, Elections § 182.

ALR and L Ed Annotations—

Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 854.

§ 7-11-430. Amounts and proration of assessments to be paid by candidates for House of Representatives.

The amount of assessment to be paid by a candidate for the House of Representatives shall be two percent of the annual salary for the office as fixed at the time of filing. In the case of a district located in more than one county, the assessment shall be prorated among the county committees on the basis of the population within those portions of the district in the counties in which it is located.

HISTORY: 1962 Code § 23-400.75:1; 1974 (58) 2124. 4.07

Research and Practice References—

25 Am Jur 2d, Elections § 182.

ALR and L Ed Annotations—

Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 864.

CHAPTER 13

Conduct of Elections

- Article 1. When, Where and How Elections Held.
- Article 3. Ballots for General and Special Elections.
- Article 5. Ballots for Primary Elections.
- Article 7. Voting Provisions Applicable to All Elections.
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- Article 13. Vote Recorders.
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ARTICLE I

WHEN, WHERE AND HOW ELECTIONS HELD

Sec.

- 7-13-10. Time of general elections for Federal, State and county officers; conduct of general and special elections.
- 7-13-20. Time of general election for certain county officers.
- 7-13-30. Time of election of probate judges.
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- 7-13-40. Time of party primary; entry of other candidates.
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- 7-13-100. Managers shall take oath before opening polls.
- 7-13-110. Managers shall be residents and registered electors of counties.
- 7-13-120. Candidates and their relatives shall not be managers or clerks.
- 7-13-130. Managers' table; guard rail; general arrangement; preservation of right to vote and secrecy of ballot.
- 7-13-140. Maintenance of order; police powers of managers.
- 7-13-150. Penalty for failure to assist in maintaining order.
- 7-13-160. Peace officers shall enter polling place only on request or to vote.
- 7-13-170. Procedure when managers fail to attend, take charge of, or conduct election.
- 7-13-180. Posting proposed constitutional amendments at polling place.

§ 7-13-10. Time of general elections for Federal, State and county officers; conduct of general and special elections.

General elections for Federal, State and county officers in this State shall be held on the first Tuesday following the first Monday in November in each even-numbered year at such voting places as have been or may be established by law. All general or special elections held pursuant to the Constitution of this State shall be regulated and conducted according to the rules, principles and provisions herein prescribed.

HISTORY: 1962 Code § 23-391; 1952 Code § 23-302; 1950 (46) 2059; 1966 (54) 2340.

Related Local Laws—

For local law provisions requiring that the United States flag be flown in precincts in Charleston and Oconee Counties, see Local Law Index.

Cross references—

As to conduct of elections, generally, see SC Const, Art 2, § 10.

As to elections for municipal offices, see §§ 5-15-10 to 5-15-150.

As to rule that elections are to be by secret ballot, see SC Const, Art 2, § 1.
As to free and open elections, see SC Const, Art 1, § 5.
As to constitutional provision that electors are privileged from arrest, see SC Const, Art 2, § 11.
As to the acquisition and use of voting machines, see §§ 7-13-1610 et seq.
As to campaign practices, generally, see §§ 8-13-610 to 8-13-630.

Research and Practice References—
26 Am Jur 2d, Elections § 226.
29 CJS, Elections § 198.

ALR and L Ed Annotations—
Scheduling election on religious holiday
as violation of federal constitutional rights,
44 ALR Fed 886.

ATTORNEY GENERAL'S OPINIONS

The commissioners of election may provide a referendum to propose a change in the tax millage of a special purpose district in conjunction with the general election, as long as the cost of the referendum is paid by the commissioners. 1975-76 Op. Atty. Gen., No 4342, p 168.
There is no prohibition to holding a county election and a municipal election on the same day; however, it will be necessary for there to be two separate registration lists, managers, etc., because a municipal election commission cannot conduct a county election. Op. Atty. Gen. to Hon. William W. Doar, Jr. Aug. 24, 1983.

§ 7-13-20. Time of general election for certain county officers.

There shall be a general election for county supervisors, county superintendents of education, sheriffs, coroners and clerks of the courts of common pleas held in each county at every alternate general election, reckoning from the year 1960, except in those counties in which the term of office of any such officers may be for a period other than four years. In such cases elections to fill such offices shall be held at the general election next preceding the expiration of any such term of office.

HISTORY: 1962 Code § 23-392; 1952 Code § 23-303; 1942 Code § 2350; 1932 Code § 2350; Civ. C. '22 § 283; Civ. C. '12 § 280; Civ. C. '02 § 253; G. S. 160, 642, 701; R. S. 211; 1882 (17) 1125; 1885 (19) 144; 1889 (20) 281; 1966 (54) 2340.

Related Local Laws—

For a local law creating exceptions to this section for Beaufort, Berkeley, Cherokee, Hampton, and Kershaw Counties, see Local Law Index.

For a local law regarding election of the sheriff in Beaufort and Kershaw Counties, see Local Law Index.

Cross references—

As to when election for clerk of court held, see § 14-17-10.

As to election of sheriff in each presidential election year, see § 23-11-10.

As to elections for municipal offices, see §§ 5-15-10 to 5-15-150.

Research and Practice References—
26 Am Jur 2d, Elections § 226.
29 CJS, Elections § 198.

§ 7-13-30. Time of election of probate judges.

The probate judge in every county shall be elected at every alternate general election, reckoning from the year 1958.

HISTORY: 1962 Code § 23-394; 1952 Code § 23-305; 1942 Code § 2350; 1932 Code § 2350; Civ. C. '22 § 283; Civ. C. '12 § 280; Civ. C. '02 § 253; G. S. 160, 642, 701; R. S. 211; 1882 (17) 1125; 1885 (19) 144; 1889 (20) 281; 1966 (54) 2340.

Related Local Laws—

For local laws creating exceptions to this section for Georgetown, Lee, Saluda, and Florence Counties, see Local Law Index.

Cross references—

As to probate courts, generally, see §§ 14-29-10 et seq.

ATTORNEY GENERAL'S OPINIONS

Expiration of term of probate judge. —The term of office of probate judge expires four years from the date of the first Tuesday in January of each alternate general election year, reckoning from the year 1958, except in Georgetown County, where the probate judge is elected at every alternate general election, reckoning from the year 1960. 1965-66 Ops. Att'y Gen., No 2177, p 312.

§ 7-13-35. Notices of general and special elections.

The election commission in each county shall publish two notices of general and special elections held in the county in a newspaper of general circulation in the county. Included in each notice shall be a reminder of the last day persons may register to be eligible to vote in the election for which notice is given. The first notice shall appear sixty days prior to the election and the second notice shall appear two weeks after the first notice; *provided*, however, the provisions of this section shall not extend to any special election held to fill a vacancy created by death, resignation, or removal from office.

HISTORY: 1978 (61) Act 572.

Cross references —

As to public notice of municipal general and special elections, see § 5-15-50, as amended by 1978 Act No. 521.

As to conduct of general and special elections generally, see § 7-13-10.

Attorney General's Opinions

Section 5-15-50, not sec. 7-13-35, governs the public notification necessary in municipal elections and requires only one public notice sixty days prior to the election. Op. Atty. Gen. to Ms. Nelle G. Power, Jan. 22, 1979.

When the newspaper of greatest general circulation is a weekly and the

notice has to appear more than exactly sixty days before the election, it would constitute substantial compliance to publish it when the newspaper does come out even if that must be a few days prior to the sixty days specified by the statute. Op. Atty. Gen. to Mr. Ralph C. Haywood, Jan. 25, 1979.

A specific notice of a referendum must be given by the county election commission in order to satisfy the requirements of the state law, and that the general sixty-day notice of a general election would not satisfy the notice requirements for a referendum to be conducted on that same date. Op. Atty. Gen. to Hon. Joyce Hearn, Sept. 7, 1982.

The fact that a notice states that the general election is to be conducted on a given date would not by itself

satisfy the notice requirements for the special election, and therefore a specific notice of a referendum must be given by the county election commission in order to satisfy the requirements of the state law. 1982 Op. Atty. Gen., No. 82-58, p.61.

The sixty day notice of this section would not apply to a special election to fill a vacancy created by resignation or removal from office. 1981 Op. Atty. Gen., No. 81-37, p. 59.

§ 7-13-40. Time of party primary; entry of other candidates.

In the event that a party shall nominate candidates by party primary election, a party primary election shall be held by such party on the second Tuesday in June of each general election year and a second and third primary election each two weeks successively thereafter, if necessary. The entries for those wishing to offer for nomination in such party primary for a statewide, congressional or district office which includes more than one county shall open at noon on April sixteenth and close at noon on April thirtieth and the entries for those wishing to offer for nomination in such party primary for State Senator, member of the House of Representatives, a countywide or less than countywide office shall open at noon on March sixteenth and close at noon on March thirtieth. If, after the closing of the time for filing pledges, there be not more than two candidates for any one office and one or more of such candidates dies or withdraws, the State or county committee, as the case may be, may, in its discretion, afford opportunity for the entry of other candidates for the office involved; *provided*, that for the office of State Senator, the discretion shall be exercised by the State committee.

HISTORY: 1962 Code § 23-396; 1952 Code § 23-372; 1950 (46) 2059; 1954 (48) 1447; 1966 (54) 2093, 2340; 1977 (60) 261.

Cross references —

As to notice of candidacy and pledge, see § 7-11-210.

As to filing of notice of candidacy and pledge, see § 7-11-250.

Research and Practice References—

29 CJS, Elections § 117.

CASE NOTES

Statutes which regulate the time for filing a declaration of candidacy are almost universally held to be mandatory. *Vandross v Ellisor*, 347 F Supp 197 (DSC 1972).

And a declaration that is filed too late is a nullity. *Vandross v Ellisor*, 347 F Supp 197 (DSC 1972).

Unless there are special circumstances or showing of excuse.—There

are some cases which hold that where there are special circumstances or a special showing of excuse, a declaration of candidacy which is filed too late

may be accepted nevertheless. *Vandross v Ellisor*, 347 F Supp 197 (DSC 1972).

ATTORNEY GENERAL'S OPINIONS

Withdrawal of candidate.—Code 1962 §§ 23-266 and 23-372 (now this section [Code 1962 § 23-396]), read together, authorize the substitution of a candidate upon the withdrawal of a prior candidate. 1965-66 Ops. Att'y Gen., No 2014, p 77.

Substitution where not more than two candidates for one office.—Where a candidate for office dies or withdraws, a party may nominate a substitute candidate if there are not more than two party candidates for any one office. 1965-66 Ops. Att'y Gen., No 2014, p 77.

The county executive committee could reopen primary entries for the office of Representative only if there were only two candidates for the party's nomination to that office or one candidate, and one or both of the two candidates, or the unopposed candidate, were to die or withdraw after the closing date for filing pledges had passed, thereby leaving only one candidate or no candidate for the party's nomination in the primary. 1969-70 Ops. Att'y Gen., No 2860, p 96.

If there were more than five candidates, the death or withdrawal of one would not furnish sufficient grounds for the executive committee to open entries back up for the reason that there would still be at least two candidates for each of the four seats open. As long as there are as many as five candidates for the four seats, there will be at least two persons vying for the party's nomination for each one in the primary because the seats are not numbered and the four candidates obtaining the greatest number of votes (whether finally determined in a first, second or even a third primary) will be nominated. 1969-70 Ops. Att'y Gen., No 2860, p 96.

Where only one candidate.—This section [Code 1962 § 23-396] does not authorize State or county executive committee to allow additional primary entries for an office merely because

there is only one candidate after the closing time for filing pledges has passed. 1969-70 Ops. Att'y Gen., No 2858, p 94.

Provisions for entry of additional State senator candidates applicable to Representatives.— This section made the decision as to additional entries for State Senator a matter of discretion with the State committee because the office is a statewide office. Therefore, as a member of the House of Representatives now is deemed to hold a State office, the provisions referring to State Senator would apply to a Representative and the discretion as to whether or not to provide opportunity for entry of additional candidates would be vested with the State Committee. 1973-74 Op. Att'y Gen., No. 3793, p. 173

This section referring to entry for new senatorial candidates if one withdraws or dies should be read to encompass candidates for seats in the House of Representatives as well as the Senate. 1973-74 Op. Att'y Gen., No. 3793, p. 173.

This section referring to entry for new senatorial candidates if one withdraws or dies should be read to encompass candidates for seats in the House of Representatives as well as the Senate. 1973-74 Op. Att'y Gen., No. 3793, p. 173.

An unopposed candidate in a primary must file a Campaign Disclosure Form within thirty days after the primary. 1982 Op. Att'y Gen., No. 82-47, p 53.

When the county council will be elected at large and five persons are offering for five offices, and one candidate withdraws, the filing can be reopened. Op. Att'y Gen. to Mr. Bernard Manning, April 7, 1978.

Participation in the March "Presidential Primary" will not affect subsequent participation in any regularly scheduled primary conducted in accordance with South Carolina law. Op. Att'y Gen. to Mr. T. Allen Legare, Jr., Jan. 15, 1980.

§ 7-13-50. Second and other primaries.

A second primary, when necessary, shall be held two weeks after the first and shall be subject to the rules governing the first primary. At such second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other remaining candidate alone shall run for any one office and in the event only one such candidate remains he shall be considered nominated, except that if there are two or more vacancies for any particular office the number of candidates shall be double the number of vacancies to be filled if so many candidates remain. In all second primaries the candidate receiving the largest number of votes cast for a given office shall be declared the nominee for such office whether or not such person shall have received a majority of the votes cast for that office, and when there are several candidates for several different offices, such as candidates for the House of Representatives, then the several candidates receiving the largest number of votes for the several positions shall be considered as nominated for such offices whether they shall have received a majority of the votes cast therefor or not. In the event of a tie between two candidates in the second primary, the county chairman, if it is a primary for a county office wherein the ties shall occur, or the State chairman, if it is a primary for United States Senator or for any State office, congressman or solicitor wherein the tie shall occur, shall order a third primary. Other primaries, if necessary, shall be ordered in like manner by the county chairman or the State chairman, as the case may be.

HISTORY: 1962 Code § 23-397; 1952 Code § 23-387; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316.

Cross references—

As to method for determining what candidates have received a majority vote, see § 7-17-610.

Research and Practice References—

29 CJS, Elections § 117.

ATTORNEY GENERAL'S OPINIONS

In a second primary only the top two candidates of the first primary may run regardless of a lack of majority between them. 1973-74 Op. Att'y Gen., No. 3822, p. 219.

§ 7-13-60. Hours polls open.

The polls must be opened at seven o'clock in the forenoon and close at seven o'clock in the afternoon of the day of election and must be held open during these hours without intermission or adjournment; but the

county committee may close any poll or all polls within any county in any primary election at an earlier hour.

HISTORY: 1962 Code § 23-398; 1952 Code § 23-342; 1950 (46) 2059; 1956 (49) 1775, 1799; 1965 (54) 466; 1966 (54) 2340; 1986 Act No. 342.

Related Local Laws—

For a local law establishing the times polls close in Lancaster County, see Local Law Index.

Precinct voting places must be open on election day even if only a few persons will be voting in those precincts. Op. Atty. Gen. to Nolen L. Brunson, Jan. 29, 1980.

§ 7-13-70. Commissioners and managers of general or special elections; term and oath of office.

For the purpose of carrying on general or special elections provided for in § 7-13-10 the Governor shall, at least thirty days prior to any such election, appoint for each county not less than three nor more than five commissioners of election upon the recommendation of the Senator and at least half of the members of the House of Representatives from the respective counties. Such commissioners shall continue in office until their successors are appointed and qualified. The commissioners of election shall appoint three managers of election for each polling place in the county for which they shall respectively be appointed for each five hundred electors, or portion thereof, registered to vote thereat and none of such officers shall be removed from office except for incompetence or misconduct. After their appointment the commissioners and managers shall take and subscribe, before any officer authorized to administer oaths the following oath of office prescribed by § 26 of Article III of the Constitution:

"I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God."

and it shall be immediately filed in the office of the clerk of court of common pleas of the county in which such commissioners and managers shall be appointed, or, if there be no such clerk, in the office of the Secretary of State. Before opening the polls, the managers of election shall take and subscribe the oath provided for in § 7-13-100. Upon the completion of the canvassing of votes, this oath shall be filed with the commissioners of election along with the ballots from that election precinct.

HISTORY: 1962 Code § 23-400; 1952 Code § 23-306; 1950 (46) 2059; 1961 (52) 48; 1966 (54) 2340; 1968 (55) 2316; 1970 (56) 2367.

Related Local Laws—

For a local law pertaining to the abolition of the commissioners of election in Lexington County and devolution of their powers and duties on the registration and elections commission for Lexington County, see Local Law Index.

For local law provisions requiring that five commissioners of election be appointed for Allendale, Charleston, Florence, Georgetown, and Union Counties, see Local Law Index.

Cross references—

As to duties of county commissioners of election in municipal annexation proceedings, see §§ 5-3-50 to 5-3-80.

Research and Practice References—

26 Am Jur 2d, Elections § 293.

29 CJS, Elections § 192.

Casenotes

Right or power to hold election must be based on authority conferred by law and election held without affirmative constitutional or statutory authority, or contrary

to material provision of law, is recognized as being nullity, even though it is fairly and honestly conducted. *Murphree v. Mottel*, 226 S.E. 2d 36, 267 SC 80 (1976)

ATTORNEY GENERAL'S OPINIONS

The Governor may appoint County Commissioners of Election in Dorchester County upon the recommendation of one of the county's Senators and a majority of the members of the House of Representatives from the county, but such appointment must be made at least thirty days prior to the election. 1971-72 Ops. Atty Gen., No 3370, p 220.

The terms for the commissioners of election are for two years from the date of appointment by the Governor. 1976-77 Op Atty Gen, No 77-42, p 42.

A county election commission has no authority to conduct municipal elections when called upon to do so by municipal election commissions. Op. Atty Gen. to Charles M. Timmons, Jan. 9, 1980.

If there has not been a reappointment of the Board the people holding over serve in a *de facto* capacity; however, there is a vacancy that can be filled at any time. Op. Atty. Gen. to Hon. H. Ellis, Mar. 7, 1983.

This section and sec. 5-15-100, when read together, require the municipal election commission to appoint at least three managers for each precinct. Op. Atty. Gen. to Mr. J. Norman Phillips, Jan. 9, 1980.

There are no statutory provisions that directly or by implication authorize municipal and county election commissions jointly to appoint the same poll managers or authorize county and municipal poll managers to serve in such combined elections. Op. Atty. Gen. to Mr. John O. Dyer, Oct. 18, 1982.

§ 7-13-80. Organization of board of managers; appointment of clerk; oaths.

The managers may appoint a clerk to assist them in their duties, who shall take the oath of office prescribed by § 26 of Article III of the Constitution before the chairman of the board of managers. The commissioners and managers at their first meeting, respectively, shall proceed to organize as a board by appointing one of their number chairman of the board. And such chairman, in each instance, may administer oaths.

HISTORY: 1962 Code § 23-400.1; ;; 1952 Code § 23-307; 1950 (46) 2059; 1961 (52) 48; 1966 (54) 2340.

§ 7-13-90. Appointment of managers of primaries.

The county committee shall meet on or before the second Monday in May of each general election year and appoint the managers for the primaries. Three managers shall be appointed for each voting place, and a clerk or clerks shall also be appointed for such voting places as the various county committees may determine. Three additional managers may be appointed for any polling place at which five hundred or more registered electors are entitled to vote. The names of all managers and clerks shall be published in one or more county newspapers at least two weeks before the election.

HISTORY: 1962 Code § 23-400.2; 1952 Code § 23-376; 1950 (46) 2059, 2442; 1954 (48) 1447; 1966 (54) 2340.

ATTORNEY GENERAL'S OPINIONS

The right to designate the person chosen to assist is exclusively with the voter and not with the chairman of the managers or the poll manager appointed by the chairman. Attorney General's Opinion Number 2011, of April 5, 1966, expressly states that the poll manager neither designates nor helps the person chosen to assist. 1978 Op. Att'y Gen, No. 78-217, p 250.

§ 7-13-100. Managers shall take oath before opening polls.

The managers before opening the polls, shall take and sign the following oath: "We do solemnly swear that we will conduct this election according to law and will allow no person to vote who is not entitled by law to vote in this election, and we will not unlawfully assist any voter to prepare his ballot and will not advise any voter as to how he should vote at this election."

HISTORY: 1962 Code § 23-400.3; 1952 Code § 23-378; 1950 (46) 2059; 1966 (54) 2340.

§ 7-13-110. Managers shall be residents and registered electors of counties.

All managers of election for the various polling places in the State shall be residents and registered electors of the respective counties in which they are appointed to work or in an adjoining county.

HISTORY: 1962 Code § 23-400.3:1; 1974 (58) 2367.

§ 7-13-120. Candidates and their relatives shall not be managers or clerks.

(1) It shall be unlawful for a candidate or the spouse, parents, children, brothers or sisters of a candidate for public office to work as a manager or clerk of election at a polling place where such candidate's name appears on the ballot.

(2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code § 23-400.3:2; 1974 (58) 2209.

§ 7-13-130. Managers' table; guard rail; general arrangement; preservation of right to vote and secrecy of ballot.

The polling places shall be provided with a table for the managers. The polls shall be provided with a guard rail, so that no one except as herein authorized shall approach nearer than five feet to the booths in which the voters are preparing their ballots. The managers at each voting place shall arrange the table, desk or other place upon which the ballot boxes shall be placed so that there shall be no crowding or confusion immediately around the boxes, and suitable means shall be provided to enable each voter to approach the boxes and deposit his ballot without interference or hindrance. The right to vote of each person so entitled and the secrecy of the ballot shall be preserved at all times.

HISTORY: 1962 Code § 23-400.4; 1952 Code § 23-344; 1950 (46) 2059; 1966 (54) 2340.

§ 7-13-140. Maintenance of order; police powers of managers.

Managers of election are clothed with such police powers as may be necessary to carry out the provisions of this article. The managers shall possess full authority to maintain good order at the polls and to enforce obedience to their lawful commands during an election and during the canvass and counting of the votes. All peace officers shall answer all such calls for help in preserving the peace as may be made by the managers of election.

HISTORY: 1962 Code § 23-400.5; 1952 Code § 23-360; 1950 (46) 2059; 1966 (54) 2340.

ATTORNEY GENERAL'S OPINIONS

The election managers have the authority to place a pollwatcher in any area that the manager designates; however, the watcher should always be placed in an area where

the election process can be clearly observed. Op. Atty. Gen. to Hon. Joyce C. Hearn, Nov. 6, 1978.

§ 7-13-150. Penalty for failure to assist in maintaining order.

Any person who, when summoned or called upon by peace officers shall fail or refuse to assist him in maintaining the peace and good order at the polls shall be fined in a sum not to exceed one hundred dollars or imprisoned not to exceed thirty days.

HISTORY: 1962 Code § 23-400.6; 1952 Code § 23-361; 1950 (46) 2059; 1966 (54) 2340.

§ 7-13-160. Peace officers shall enter polling place only on request or to vote.

No sheriff, deputy sheriff, policeman or other officers shall be allowed to come within the polling place except to vote unless summoned into it by a majority of the managers. On failure of any sheriff, deputy sheriff, policeman or other officer to comply with the provisions of the preceding sentence, the managers of election, or one of them, shall make affidavit against such sheriff, deputy sheriff, policeman or other officer for his arrest.

HISTORY: 1962 Code § 23-400.7; 1952 Code § 23-362; 1950 (46) 2059; 1966 (54) 2340.

ATTORNEY GENERAL'S OPINIONS

There is no prohibition to an off-duty officer acting as a poll-watcher, if he is otherwise qualified and does not participate in uniform. Op. Atty. Gen. to Mr. Donald Fowler, Nov. 1, 1976.

§ 7-13-170. Procedure when managers fail to attend, take charge of, or conduct election.

In case all of the managers shall fail to attend at the same time and place appointed for holding such poll or shall refuse or fail to act or in case no manager has been appointed for such poll, it shall be lawful for the voters present at the precinct voting place on that day to appoint from among the qualified voters of such precinct or club the managers to act as managers in the place and stead of the absent managers, and any one of the managers so appointed shall administer the oath to the other managers. But if the duly appointed managers attend in a reasonable time, they shall take charge of and conduct the election.

HISTORY: 1962 Code § 23-400.8; 1952 Code § 23-343; 1950 (46) 2059; 1966 (54) 2340.

§ 7-13-180. Posting proposed constitutional amendments at polling place.

Whenever an amendment to the Constitution of this State shall be voted upon at any election, the commissioners of election of each county in the State shall have such amendment conspicuously posted at each voting precinct in the county upon the day of the election. Such printed amendments shall be furnished to the commissioners of election by the Secretary of State.

HISTORY: 1962 Code § 23-400.23; 1952 Code § 23-321; 1950 (46) 2059; 1966 (54) 2340.

CASE NOTES

Posting does not cure defective ballot.—A defect or insufficiency in a ballot is not cured by fact that the full text of proposing resolution is posted in each voting place as required by this section. *Ex parte Tipton*, 229 SC 471, 93 SE 640 (1956).

§ 7-13-190. Special elections to fill vacancies for unexpired terms.

(A) Except as otherwise provided in this Code as to specific offices, whenever a vacancy occurs in office by reason of death, resignation, or removal and the vacancy in office is one which is filled by a special election to complete the term of office, this section applies.

(B) In partisan elections, the parties shall open filing for the office at noon on the third Friday after the vacancy occurs for a period to close ten days later at noon. A primary must be held on the eleventh Tuesday after the vacancy occurs. A runoff primary must be held on the thirteenth Tuesday after the vacancy occurs. The special election must be on the eighteenth Tuesday after the vacancy occurs. If the filing period closes on a state holiday, then filing must be held open through the succeeding weekday. If the date for an election falls on a state holiday, it must be set for the next succeeding Tuesday.

(C) If the office is not one for which there are partisan elections, then the filing must be opened at noon on the third Friday after the vacancy occurs for a period to close ten days later at noon. The filing must be made to the same entity to which the nonpartisan officeholders would normally file for office in a general election year. The election must be set for the thirteenth Tuesday after the vacancy occurs. Both the filing date and the election date are subject to the provisions in subsection (B) of this section regarding holidays.

Article 3

Ballots for General and Special Elections

SEC.

- 7-13-310. Kinds of general election ballots; different colored paper shall be used.
- 7-13-320. Ballot standards and specifications.
- 7-13-330. Form of ballot; instructions.
- 7-13-340. Printing and distribution of ballots.
- 7-13-350. Certified candidates nominated by primary or convention shall be placed on ballot.
- 7-13-351. Nomination by petition.
- 7-13-360. Place on ballot for write-in names.

- 7-13-370. Death, withdrawal or disqualification of candidate after name printed on ballot.
- 7-13-380. Reprinting ballots to delete name of deceased or withdrawn candidate is optional.
- 7-13-390. Limitations of withdrawal of candidacy.
- 7-13-400. Form of ballot when questions are submitted.
- 7-13-410. Ballots where both state-wide and local constitutional amendments are submitted.
- 7-13-420. Oath of printer of ballots and assistants.
- 7-13-430. Number of ballots to be provided.
- 7-13-440. Voting machine ballots; arrangement of nominations.
- 7-13-450. Use of voting machines shall not prohibit use of separate ballots on certain questions.

§ 7-13-310. Kinds of general election ballots; different colored paper shall be used.

In the general elections provided for in § 7-13-10, there shall be four kinds of ballots called, respectively: "Official Ballot for Presidential Elector"; "Official Ballot for State Offices, United States Senator and Members of Congress"; "Official Ballot for State Senator, Member of the House of Representatives, County, Circuit and Other Offices" and "Official Ballot on Constitutional Amendments or other Propositions Submitted." Each such kind of ballot shall be printed upon different colored paper as shall be provided for by the executive director.

HISTORY: 1962 Code § 23-400.11; 1952 Code § 23-308; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2124.

Cross references—

As to constitutional provision that elections are to be by secret ballot, see SC Const, Art 2, § 1.

As to ballots for multiple offices, see § 7-1-60.

As to ballots for House of Representatives offices, see § 2-1-30.

As to ballots for Senate offices, see § 2-1-60.

Research and Practice References—

26 Am Jur 2d, Elections § 204.

29 CJS, Elections §§ 152 et seq.

7-13-320. Ballot standards and specifications.

General election ballots shall conform to the following standards and specifications:

(A) the ballot shall be printed on paper of such thickness that the printing cannot be distinguished from the back and shall be of such size and color as directed by the State Election Commission. If more than one ballot is to be used in any election, each such ballot shall be printed upon different colored paper;

(B) Across the top of the ballot shall be printed "Official Ballot, General Election," beneath which shall be printed the date of the election, the

county and the precinct. Above the caption of each ballot shall be one stub, with a perforated line between the stub and the top of the ballot. The stub shall have printed thereon "Official Ballot, General Election" and then shall appear the name of the county, the precinct and the date of the election. On the right side there shall be a blank line under which there shall be "Initials of Issuing Officer." Stubs on ballots for each precinct shall be prenumbered consecutively, beginning with No. 1;

(C) On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice President of the United States nominated by each political party qualified under the provisions of § 7-9-10 and those nominated by petition. A separate column shall be assigned to each political party with candidates and to each separate petition slate of candidates on the ballot and each party and each petition candidates's columns shall be separated by distinct black lines. At the head of each column the party or petition name shall be printed in large type and below it a circle, one-half inch in diameter, and below the circle the names of the party's and petition candidates for President and Vice President in that order. On the face of the ballot above the party and petition candidate's column division the following instruction shall be printed in heavy black type:

"a. To vote this ballot make a cross (X) in the circle below the name of the political party or petition column for whose candidates you wish to vote.

b. A vote for the names of a political party's candidates or petition candidates for President and Vice President is a vote for the electors of that party or petition candidates, the names of whom are on file with the Secretary of State."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Executive Director of the State Election Commission.

The official ballot for presidential electors shall not be combined with any other official ballots.

(D) The names of candidates offering for any other office shall be placed in the proper place on the appropriate ballot, stating whether it is a state, congressional, legislative, county or other office.

(E) The names of the several officers to be voted for and the tickets of the parties and petition candidates shall be placed on the ballots in an order as arranged by the State Election Commission as to those ballots for which it is responsible for distribution and by the commissioners of election for the respective counties as to the ballots for which they are responsible for distribution, including those for State Senator and member of the House of Representatives. If the State Senator or member of the House of Representatives or any other officer is to be elected from more

than one county, the commissioners of election from the various counties from which they are to be elected shall assure that there shall be uniformity of placement on the ballots of their respective counties and should the commissioners fail to agree within sixty days prior to the general election, and upon receipt of written certification by at least one commissioner, that they have failed to act, the State Election Commission shall determine the order of placing the names on the ballots.

HISTORY: 1962 Code § 23-400.12; 1952 Code § 23-309; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2124; 1982 (62) 2470; 1984 Act No. 402

Research and Practice References—

26 Am Jur 2d, Elections § 205.

29 CJS, Elections § 156.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 66 (order for alternative writ of mandamus to issue requiring county clerk to permit inspection of ballots).

CASE NOTES

Printing Christian or given name of candidate on ballot. — The requirement of this section that the candidate's name shall be placed on the ballot does not refer to the Christian or given name. *Stevenson v. Ellisor*, 243 S.E.2d 445 (S.C. 1978).

Nickname of candidate on ballot. — This decision does not extend to the use of nicknames on the ballot. Nicknames, bearing no relation to a person's given name, remain outside the scope of this section. *Stevenson v. Ellisor*, 243 S.E. 2d 445 (S.C. 1978).

Derivative of candidate's name may appear on ballot. — The opinions of the Attorney General restricting the use of nicknames should not bar the use of a derivative of one's given name, properly acquired under the common law and used in good faith for honest purposes. *Stevenson v. Ellisor*, 243 S.E. 2d 445 (S.C. 1978).

Derivative of candidate's name not proscribed by section. — A derivative of one's given name, properly acquired under the common law and used in good faith for honest purposes is not proscribed by this section. Respondent's given name "Ferdinan" contains the first three letters of the name "Nancy." It is therefore a derivative, albeit a less common one, just as "Rick" is a derivative of "Richard" and "Sue" is a derivative of "Susan." *Stevenson v. Ellisor*, 243 S.E. 2d 445 (S.C. 1978).

Injunction.—As to injunction against the Secretary of State to prevent the use of George Wallace's name on the ballot of electors nominated by The South Carolina Independent Party, see *Wallace v Thornton*, 251 SC 319, 162 SE2d 273 (1968).

ATTORNEY GENERAL'S OPINIONS

Neither one's title nor nickname may be printed on a general election ballot. 1967-68 Ops. Att'y Gen., No 2489, p 161.

One may not run as a write-in candidate for magistrate at a general election. 1967-68 Ops. Att'y Gen., No 2581, p 285.

A diminutive name is equivalent to a derivative name and is not a nickname wholly unrelated to the given names, and may be placed on the general election ballot. Op. Atty. Gen. to Mr. James F. Hendrix, Sept. 30, 1980.

“Fritz” is a diminutive of the given name “Frederick” and may be placed on the

ballot while “Pug” is not a diminutive or a derivative of either “Charles” or “DuFort” and, therefore, would still be considered a nickname bearing no relationship to that person’s given name. Op. Atty. Gen. to Mr. James F. Hendrix, Sept. 30, 1980.

§ 7-13-330. Form of ballot; instructions.

The arrangement of general election ballots containing the names of candidates for office shall conform as nearly as possible to the following plan, with a column or columns added in case of nomination by petition and a blank column added for write-in votes, and shall contain the specified instructions there set forth and no other:

GENERAL ELECTION OFFICIAL BALLOT

No. _____ COUNTY, SOUTH CAROLINA

November ____, 19__

Initials of Issuing Officer

OFFICIAL BALLOT GENERAL ELECTION

_____ County, South Carolina

November ____, 19__

Precint _____

INSTRUCTIONS—To vote a straight party ticket, make a cross (X) in the circle (O) under the name of your party. Nothing further need or should be done. To vote a mixed ticket, or in other words for candidates of different parties, omit making a cross (X) mark in the party circle at the top and make a cross (X) in the voting square opposite the name of each candidate on the ballot for whom you wish to vote. If you wish to vote for a candidate not on any ticket, write or place the name of such candidate on your ticket opposite the name of the office. Before leaving the booth, fold the ballot so that the initials of the manager may be seen on the outside.

| <i>Names of Office</i> | <i>Name of Party</i> 0 | <i>Name of Party</i> 0 | <i>Nomination by</i> <i>Petition</i> 0 |
|---|---|---|---|
| STATE Governor | Governor <input type="checkbox"/> Name of Candidate | Governor <input type="checkbox"/> Name of Candidate | Governor <input type="checkbox"/> Name of Candidate |
| Lieutenant Governor | Lieut. Governor <input type="checkbox"/> Name of Candidate | Lieut. Governor <input type="checkbox"/> Name of Candidate | Lieut. Governor <input type="checkbox"/> Name of Candidate |
| Secretary of State | Sec. of State <input type="checkbox"/> Name of Candidate | Sec. of State <input type="checkbox"/> Name of Candidate | Sec. of State <input type="checkbox"/> Name of Candidate |
| CONGRES- SIONAL Senator | U.S. Senator <input type="checkbox"/> Name of Candidate | U.S. Senator <input type="checkbox"/> Name of Candidate | U.S. Senator <input type="checkbox"/> Name of Candidate |
| Representative in Congress District | U.S. Repre- sentative <input type="checkbox"/> Name of Candidate | U.S. Repre- sentative <input type="checkbox"/> Name of Candidate | U.S. Repre- sentative <input type="checkbox"/> Name of Candidate |

HISTORY: 1962 Code § 23-400.15; 1952 Code § 23-310; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 205.

29 CJS, Elections § 156.

CASE NOTES

Quoted in *United Citizens Party v South Carolina State Election Comm'n*, 319 F Supp 784 (DSC 1970).

CASE NOTES

Failure to follow instructions.—The instructions provided in this section are not to be construed with such inflexible literalness as to render the slightest deviation from them fatal to the ballot. They are directory, and failure to follow them to the letter will not invalidate the ballot unless thereby such doubt has been cast upon the voter's intention, as evidenced by his ballot, that to determine such intention would involve speculation rather than reasonable inference. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

Name of party nominee on write-in ballot need not be scratched out.—Neither this section nor any other provision of the present general election law

requires, expressly or by necessary implication, that in order to vote for a candidate other than the party nominee, the voter must not only write the name of his candidate on the ballot opposite the name of the office, but also scratch out the name of the party nominee. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

And write-in ballot counted where voter marked party circle.—This section does not, either expressly or by necessary implication, forbid the counting of a ballot for a "write-in" candidate because the voter, in addition to writing in the name of his candidate, has marked the party circle. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

ATTORNEY GENERAL'S OPINIONS

Omission of straight ticket circle.— The straight ticket circle may be left off the general election ballot upon the request of a political party or nominee by petition where a party has nominated only one county candidate. 1965-66 Ops. Att'y Gen., No 2137, p 265.

§ 7-13-340. Printing and distribution of ballots.

All ballots cast in general elections for national, State, county, municipal, district and circuit officers in the towns, counties, districts, circuits, cities and other political divisions shall be printed and distributed at public expense. The printing and distribution of all ballots, other than the county, State Senator, member of the House of Representatives, local or circuit ballots herein designated, the ballots for elections in cities and towns and the ballots for election on bonds or other local measures, shall be arranged and handled by the State Election Commission and shall be paid for by the State. The State Election Commission shall have all necessary ballots for elections for presidential electors, State officers, United States Senators and members of Congress printed, and shall deliver such ballots to the various county commissioners of election at least ten days prior to the date of the election and the county commissioners of election shall place such ballots in ballot boxes for distribution to the election managers of the various precincts.

The printing and distribution of ballots in all State Senate, member of the House of Representatives, county, local and circuit elections shall be arranged and handled by the commissioners of election of the several counties and shall be paid for by the respective counties, and the commissioners of election shall place such ballots in ballot boxes for distribution to the election managers of the various precincts. The printing and distribution of ballots in all municipal elections shall be arranged and handled by the municipal authorities conducting such elections and shall be paid for by the municipalities.

The terms "*municipal*" and "*municipalities*" as used in this section shall be construed to include school districts, public service districts and like political subdivisions.

HISTORY: 1962 Code § 23-400.14; 1952 Code § 23-311; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2124.

§ 7-13-350. Certified candidates nominated by petition, primary or convention shall be placed on ballot.

The nominees in a party primary or party convention held under the provisions of this title by any political party certified by the Commission under this title for one or more of the offices, national, state, circuit, multi-county district, countywide, or less than countywide, to

be voted on in the general election must be placed upon the appropriate ballot for the election as candidates nominated by party by the authority charged by law with preparing the ballot if the names of the nominees are certified by the political party chairman, vice-chairman, or secretary to the authority, for general elections held under Section 7-13-10, not later than twelve o'clock noon on September first, or if September first falls on Sunday, not later than twelve o'clock noon on the following Monday; and for a special or municipal election, by at least twelve o'clock noon on the thirtieth day prior to the date of holding the election, or if the thirtieth day falls on Sunday, by twelve o'clock noon on the following Monday.

HISTORY: 1962 Code § 23-400.15; 1952 Code § 23-312; 1950 (46) 2059; 1958 (50) 1860; 1959 (51) 285; 1966 (54) 2340; 1958 (55) 2316; 1974 (58) 2866; 1976 (59) 1702; 1984 Act No. 263; 1984 Act No. 405; 1986 Act No. 344.

Research and Practice References—

26 Am Jur 2d, Elections § 216.

29 CJS, Elections §§ 161 et seq.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 51 (petition or application to require inclusion of name of nominee by petition on ballot).

ATTORNEY GENERAL'S OPINIONS

When qualification of elector determined. — Qualification of a candidate as elector as required by S.C. Const., Art. 17, § 1 is determined as of time of election and not at time of filing of his renomination petition. 1967-68 Ops. Att'y Gen., No. 2559, p. 257.

Appointed office not to be placed on ballot.—County treasurer, being an appointed office, should not be placed on general election ballot. 1965-66 Ops. Att'y Gen., No 2049, p 132.

Multiple candidacy.—It appears that there are no provisions of law dealing with multiple candidacy in South Carolina, and in absence of such provisions, there may be multiple nominations of one name by several parties. 1969-70 Ops. Att'y Gen., No 2996, p 275.

As a magistrate holds an appointive position, his name should not be placed on the general election ballot. Op. Atty. Gen. to Mr. W.M. Brice, Sept. 24, 1976.

§ 7-13-351. Nomination by Petition.

Any nominee by petition for one or more of the offices, national, state, circuit, multi-county district, countywide, or less than countywide, to be voted on in the general election must be placed upon the appropriate ballot by the officer, commissioners, or other authority charged by law with preparing the ballot if the petition is submitted to the officer, commissioner, or other authority, as the case may be, for general elections held under Section 7-13-10, not later than twelve o'clock noon on August first, or if August first falls on Sunday, not later than twelve o'clock noon on the following Monday. At the time the petition is submitted, the authority charged with accepting it shall issue a receipt to the person submitting the petition which shall reflect the date it was submitted and the total number of signatures contained therein. The board of voter registration of each respective county shall

check the petition at the request of the authority charged with printing the ballot for that office and shall certify the results to the authority not later than twelve o'clock noon September first, or if September first falls on Sunday, not later than twelve o'clock noon on the following Monday.

The petition of any candidate in any special or municipal election must be submitted to the authority charged with printing the ballot for those offices not later than noon, on the forty-fifth day prior to the date of the holding of the election, or if the forty-fifth day falls on Sunday, by not later than twelve o'clock noon on the following Monday. At the time a petition is submitted, the authority charged with accepting it must issue a receipt to the person submitting the petition which must reflect the date it was submitted and the total number of signatures contained therein. The board of voter registration of each respective county must check the petition at the request of the authority charged with printing of the ballots for that office and must certify the results thereof to the authority not later than twelve o'clock noon on the thirtieth day prior to the date of holding the election; or if the thirtieth day falls on a Sunday, by twelve o'clock noon on the following Monday.

Once submitted for verification, a petition for nomination of a candidate for any office may not be returned to the petitioner, but must be retained by the authority to whom the petition was submitted and must become a part of the records of the election for which it was submitted.

HISTORY: 1984 Act No. 263 Eff. date 1/27/84; 1986 Act No. 344.

ATTORNEY GENERAL'S OPINIONS

A petition candidate for the House in a multicounty district should file with the State Election Commission and not with the county election commissions of the counties the office would represent. Op. Atty. Gen. to Ms. Janet Palazzolo, Oct. 21, 1980.

Petitions filed with an election authority are not presumed to be valid, and the

election authority must undertake some reasonable and reliable procedure to confirm that the petitions comply with the statutory requirements. Op. Atty. Gen. to Mr. James B. Ellisor, Sept. 22, 1978.

The form of the confirming procedure is within the discretion of the election authority. Op. Atty. Gen. to Mr. James B. Ellisor, Sept. 22, 1978.

§ 7-13-352. Nomination by Statement of Candidacy.

Any candidate for a nonpartisan office, multi-county district, countywide or less than countywide, to be voted on at the time of the general election, who qualifies by statement of candidacy shall file the statement of candidacy with the authority responsible by law for conducting the election not later than twelve o'clock noon on Sep-

tember first, or if September first falls on Sunday, not later than twelve o'clock noon on the following Monday.

§ 7-13-360. Place on ballot for write-in names.

The ballots shall also contain a place for voters to write in the name of any other person for whom they wish to vote except on ballots for the election of the President and Vice President.

HISTORY: 1962 Code § 23-400.17; 1952 Code §23-314; 1950 (46) 2059; 1966 (54) 2349; 1982 (62) 2470.

ATTORNEY GENERAL'S OPINIONS

When one of two candidates died a week before the election, sufficient time did not exist to allow other candidates to file for election and therefore, if any voters desired to vote for another candidate, they would have to use the write-in procedure. Op. Atty. Gen. to Mr. Herman E. Cox, Oct. 31, 1977.

Write-in candidates do not meet the statutory requirements for being placed on the ballot as petition, primary or conven-

tion candidates; however, if a write-in candidate receives the most votes and is otherwise legally qualified, he would win that election. Op. Atty. Gen. to Mr. Leroy Pendleton, Sept. 24, 1980.

An active campaign for a write-in election by a disqualified candidate would still place the candidate in the position of violating his pledge. Op. Atty. Gen. to Hon. Patrick B. Harris, May 26, 1980.

§ 7-13-370. Death, withdrawal or disqualification of candidate after name printed on ballot.

If any candidate dies, withdraws or otherwise becomes disqualified after his name has been printed on an official election ballot and if any person is nominated, as authorized by law, to fill such vacancy, the name of the candidate so nominated to fill such vacancy need not be printed upon the ballots, but the name of such candidate so nominated shall be certified by the party executive committee making the nomination to the officer, commissioners or other authority charged with the duty of printing such ballots and a vote cast by a voter for the name of the candidate printed on the ballot who has either died, withdrawn or otherwise become disqualified shall be counted as a vote for the candidate subsequently nominated to fill such vacancy whose name is on file with such officer, commissioners, or other authority.

HISTORY: 1962 Code § 23-400.18; 1952 Code § 23-315; 1950 (46) 2059; 1966 (54) 2340.

Editor's Note —

Section 7-13-350 provides that the names of candidates nominated for public office shall be certified by the political party chairman, vice-chairman or secretary in the case of a party candidate and by the person authorized to receive a petition when the candidate is not a party nominee.

Research and Practice References—

26 Am Jur 2d, Elections § 217.

29 CJS, Elections § 167.

ATTORNEY GENERAL'S OPINIONS

When on of two candidates died a week before the election, sufficient time did not exist to allow other candidates to file for election and therefor, if any voters desired to vote for another can-

didate, they would have to use the write-in procedure. Op. Atty. Gen. to Mr. Herman E. Cox, Oct. 31, 1977.

§ 7-13-380. Reprinting ballots to delete name of deceased or withdrawn candidate is optional.

After the official ballots have been printed by the proper officer, commissioners or other authority, the death or withdrawal of a candidate whose name is printed on the official ballot shall not require such officer, commissioners or other authority to reprint the official ballots, but the officer, commissioners or other authority having jurisdiction over the printing and distribution of the ballots concerned may cause such ballots to be reprinted and be substituted in all respects for the first printed ballots if such substitution is deemed feasible and advisable.

HISTORY: 1962 Code § 23-400.19; 1952 Code § 23-316; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 217.

29 CJS, Elections § 167.

§ 7-13-390. Limitations on withdrawal of candidacy.

After the proper officer, commissioners or other authority has been notified of the nomination, as hereinbefore specified, of any candidate for office, he shall not withdraw such nomination unless upon the written request of the candidate so nominated made at least thirty days before the day of election.

HISTORY: 1962 Code § 23-400.20; 1952 Code § 23-317; 1950 (46) 2059; 1966 (54) 2340.

Attorney General's Opinions

Construing this section and 7-11-50 together, it seems clear that normally a candidate cannot withdraw his candidacy within thirty days of an election; but

because of later adopted provisions of law, withdrawal at any time may be made in certain specified situations. Op. Atty. Gen. to a Congressman, Oct. 10, 1980.

§ 7-13-400. Form of ballot when questions are submitted.

The form of ballot in an election on the issuance of bonds or in which any other question or issue is submitted to a vote of the people shall be a statement of the question or questions and shall thereafter have the following words:

In favor of the question or issue (as the case may be)

Opposed to the question or issue (as the case may be)

The voter shall be instructed in substance, if he wishes to vote in favor of the proposition to place a check or cross mark in the

square after the words first above written and if he wishes to vote against the proposition to place a check or cross mark in the square after the words second above written.

Nothing herein shall be construed to prevent any party from submitting to party members any question or issue.

HISTORY: 1962 Code § 23-400.21; 1952 Code § 23-318; 1950 (46) 2059, 2355; 1966 (54) 2340.

Cross references—

As to form of ballot in election as to issuance of municipal general obligation bonds, see § 5-21-310.

Research and Practice References—

26 Am Jur 2d, Elections § 221.

29 CJS, Elections § 170.

CASE NOTES

Directions as to form of ballot are mandatory.—*Ex parte Riggs*, 52 SC 298, 29 SE 645 (1898).

Secrecy of ballot is essential.—*State v State Board*, 78 SC 461, 59 SE 145 (1907).

Word "ballot" implying secrecy of voting.—*State v State Board*, 78 SC 461, 59 SE 145 (1907).

Participation in election where se-

crecy of ballot is being violated does not estop voter from contesting election.—Where a local option election was so held as to destroy the secrecy of the ballot, an elector, by voting without protest, did not estop himself from contesting the election. *State v State Board*, 78 SC 461, 59 SE 145 (1907).

Cited in *Bolt v Cobb*, 225 SC 408, 82 SE2d 789 (1954).

ATTORNEY GENERAL'S OPINIONS

Methods of providing for appearance of questions on ballot.—The available methods of providing for the appearance of questions and issues on ballots is by consent of the political party conducting the election in the case of primary elections, and by statutory authorization in the case of general elections. 1965-66 Ops. Att'y Gen., No 2002, p 63.

Advisory referendum requires legislative authority. 1969-70 Ops. Att'y Gen., No 2935, p 190.

Two referenda or questions, where properly stated and separated, may be placed on a single ballot. Op. Atty. Gen. to Ms. Deborah C. Westbrook, Aug. 27, 1982.

A ballot in a referendum should contain only the questions as set out in the petition or as called for by the council. 1983 Op. Atty. Gen., No. 83-16, p. 32.

§ 7-13-410. Ballots where both state-wide and local constitutional amendments are submitted.

Whenever at any general election proposed amendments to the Constitution of both state-wide and local natures are submitted to the qualified electors of the State, the State officer charged with the duty of preparing the ballots shall arrange and classify the proposed amendments on such ballots as follows:

At the top of one ballot shall be printed the words "Statewide Constitutional Amendments." Under this heading there shall be

placed the various proposed amendments of a state-wide nature. At the top of a separate ballot shall be printed the words "Local Constitutional Amendments." Under this heading there shall be printed in alphabetical order the names of the various counties of the State affected by any proposed local amendments and under the name of each county the particular amendment affecting such county, or any particular subdivision thereof, or municipality situated therein, but when any proposed amendment relates to two or more counties such proposed amendment shall be listed under a joint heading combined of the names of such counties. The heading shall be printed in larger type than that used in printing the proposed amendment.

Ballots for the state-wide constitutional amendments shall be printed on white paper and ballots for the local constitutional amendments shall be printed on a paper other than white.

HISTORY: 1962 Code § 23-400.22; 1952 Code § 23-319; 1950 (46) 2059; 1965 (54) 175; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 222.

29 CJS, Elections § 170.

ATTORNEY GENERAL'S OPINIONS

Advisory referendum requires legislative authority. 1969-70 Ops. Att'y Gen., No 2935, p 190.

§ 7-13-420. Oath of printer of ballots and assistants.

The printer with whom the executive director, commissioners of election or other authority, as the case may be, shall contract for the printing of official ballots shall, before the work is commenced, take an oath before the Executive Director of the State Election Commission or the chairman of the commissioners or other authority, as the case may be, who may administer such oath, to the following effect: "I, _____, do solemnly swear that I will print (here insert number) ballots according to the instructions of the _____ of _____; that I will not print or permit to be printed, directly or indirectly, more than the above number; that I will at once destroy all imperfect and perfect impressions other than those required to be delivered to the electoral board; that as soon as said number of ballots is printed I will distribute the type used for such work and that I will not communicate to anyone whomsoever, in any manner whatsoever, the size, style or contents of such ballots."

The above oath shall be reduced to writing and signed by the person taking it and also a similar affidavit shall be required of any

employee or other person engaged upon the work or who shall have access to it. Any intentional violation of such oath shall constitute the crime of perjury. Any other violation of the provisions of this section shall be a misdemeanor and punished by a fine of one hundred dollars or imprisonment for thirty days in jail.

Nothing herein contained shall be construed to prohibit the executive director, the commissioners or other authority from publishing or otherwise disclosing the contents, style and size of ballots required to be printed by them which they are respectively authorized and empowered to publish or otherwise disclose.

HISTORY: 1962 Code § 23-400.24; 1952 Code § 23-320; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316.

§ 7-13-430. Number of ballots to be provided.

There shall be provided for each voting place where voting machines are not used as many ballots as is equal to one hundred and ten percent of the registered qualified voters at such voting place. There shall be provided for each voting place where voting machines are used as many ballots as are equal to ten percent of the registered qualified voters at such voting place.

HISTORY: 1962 Code § 23-400.25; 1952 Code § 23-347; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—
29 CJS, Elections § 155.

§ 7-13-440. Voting machine ballots; arrangement of nominations.

In every county, city or town providing voting machines, the commissioners of election shall furnish to the managers of election a sufficient number of ballots printed on clear white paper, of such form and size as will fit the ballot frames of the machines, the arrangement of the names of the candidates on such ballots to be prescribed by the commissioners of election. Party nominations shall be arranged on each voting machine either in columns or horizontal rows, as shall nominations by petition, and the captions of the various ballots on such machines shall be so placed as to indicate to the voter what push knob, key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice.

HISTORY: 1962 Code § 23-400.26; 1966 (54) 2340.

Research and Practice References—
26 Am Jur 2d, Elections § 207.
29 CJS, Elections § 158.

ATTORNEY GENERAL'S OPINIONS

Only voting machines with master levers have been approved for use in South Carolina. 1967-68 Ops. Att'y Gen., No 2498, p 175.

Under 1962 Code § 23-400.26 [1976 Code § 7-13-440], voting machines

must be constructed to allow a voter to vote for all candidates of one party at any level of government. 1975-76 Op Atty Gen, No 4464, p 326.

§ 7-13-450. Use of voting machines shall not prohibit use of separate ballots on certain questions.

The use of voting machines in an election shall not prohibit the use of a separate ballot for constitutional amendments and other public measures.

HISTORY: 1962 Code § 23-400.27; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 206.

29 CJS, Elections § 157.

ATTORNEY GENERAL'S OPINIONS

Separate paper ballots for constitutional amendments.—It was the intent of the legislature that separate paper ballots should be used for constitutional amendments where it is impossible to place the amendments on the machine themselves due to space re-

quirements. 1967-68 Ops. Att'y Gen., No 2503, p 183.

Constitutional amendments cannot be placed on a voting machine by numbers. 1967-68 Ops. Att'y Gen., No 2503, p 183.

ARTICLE 5

BALLOTS FOR PRIMARY ELECTIONS

Sec.

7-13-610. Ballot specifications.

7-13-620. Number of ballots provided.

§ 7-13-610. Ballot specifications.

The ballots shall contain in print the names of all candidates and shall have a stub at the top perforated so as to be easily detached. On the stub shall be printed "Official Ballot," Club _____, No. _____. On the right side there shall be a blank line under which shall be printed "Initials of Issuing Officer." The numbers shall run seriatim for each club. The ballots shall be furnished by the State committee for all except county officers, congressmen and circuit solicitors, for which the county committee shall furnish the ballots. One ballot shall contain the names of all persons running for State offices and United States Senator. The other ballot shall contain the names of all persons running for the General Assembly, county offices, congressmen and solicitors.

All ballots furnished by the State committee hereunder shall have marked thereon in plain type, both on the stub and on the ballot proper the words "State Ballot" and all ballots furnished by the county committee hereunder shall have marked thereon in plain type, both on the stub and on the ballot proper the words "County Ballot."

The State ballot shall be printed on yellow paper and the boxes in which it is to be deposited shall be painted the same color. The county ballot shall be printed on plain white paper and the boxes in which it is to be deposited shall be painted white.

"The ballot shall contain a voting square opposite the name of each candidate and the voter shall vote by putting a mark in the voting square opposite the name of the candidate of his choice."

HISTORY: 1962 Code § 23-400.31; 1952 Code § 23-377; 1950 (46) 2059; 1966 (54) 2340; 1981 (62) 1.

Cross references—

As to constitutional provision that elections are to be by secret ballot, see SC Const. Art 2, § 1.

Research and Practice References—

29 CJS, Elections §§ 118(1) et seq.

§ 7-13-620. Number of ballots provided.

There shall be provided for each voting place where voting machines are not used as many ballots as is equal to one hundred and ten percent of the registered qualified voters at such voting place. There shall be provided for each voting place where voting machines are used as many ballots as is equal to ten percent of the registered qualified voters at such voting place.

HISTORY: 1962 Code § 23-400.32; 1952 Code § 23-347; 1950 (46) 2059; 1966 (54) 2340.

ARTICLE 7

VOTING PROVISIONS APPLICABLE TO ALL ELECTIONS

SEC.

7-13-710. Proof of right to vote; signing poll list; comparison of signatures.

7-13-720. Oath of voter.

7-13-730. Delivery and marking of ballot; deposit into ballot box.

7-13-740. Number and construction of booths; only one voter in booth at a time; speaking to voter prohibited.

7-13-760. Time when voter must leave booth and voting place; voter must be alone in booth and must not talk while voting.

7-13-770. Unauthorized persons not allowed within guard rail; voter may obtain assistance.

7-13-780. Designation of voters who may receive assistance.

7-13-790. Substitute for marred or defaced ballot.

7-13-800. Write-ins shall be in handwriting of voter or authorized manager.

7-13-810. Prevention of illegal voting or taking too much time; challenging voters.

7-13-820. Voting by person whose name is not on precinct list.

7-13-830. Procedure when voter challenged.

7-13-840. Ballot boxes; number, location, construction, color, labeling.

7-13-850. Closing polls; voters waiting may vote.

7-13-860. Watchers; appointment, qualifications, identification, and conduct.

§7-13-710. Proof of right to vote; signing poll list; comparison of signatures.

When any person presents himself to vote, he must produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the South Carolina Department of Highways and Public Transportation (SCDHPT), if he is not licensed to drive; provided, however, that any person registered prior to the effective date of this act who does not possess a driver's license or other form of identification containing a photograph may vote upon production of a valid registration certificate; provided, further, however, that if such person loses or defaces his registration certificate, he must, thereafter, obtain a South Carolina driver's license or other form of identification containing a photograph issued by the SCDHPT before voting in any subsequent election. Any elector may also be permitted to vote if he presents, in lieu of a valid driver's license or other photo identification, the written notification issued to him by the Board of Registration provided for by Section 7-5-180 if the notification has been signed by the elector. His name must be checked by one of the managers on the margin of the page opposite to his name upon the registration books, or copy of the books, furnished by the board of registration. The managers must keep a poll list which shall contain one column headed 'Names of Voters'. Before any ballot is delivered to a voter, the voter must sign his name on the poll list which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers must compare the signature on the poll list with the signature on the voter's driver's license or other identification and may require further identification of the voter and proof of his right to voter under this Title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.

HISTORY: 1962 Code § 23-400.51; 1952 Code §§ 23-380; 1950 (46) 2059; 1966 (54) 2340; 1068 (55) 2316, 1984 Act No. 510.

Related Local Laws—

For a local law regarding rosters of electors in Dillon and Spartanburg Counties, see Local Law Index.

Research and Practice References—

26 Am Jur 2d, Elections §237.

ATTORNEY GENERAL'S OPINIONS

Registration certificate lacking attestation as to elector's signature.—A challenge by a poll watcher of a vote is not proper, necessarily, where a voter's registration certificate merely lacks the attestation of a board member, deputy member or clerk as to the signature of the elector appearing thereon. 1970-71 Ops. Att'y Gen., No 3193, p 167.

A woman whose name appears on the registration list under her maiden name but has since married and changed her name would not be denied the right to vote. Op. Atty. Gen. to Mr. John K. deLoach, Jr., Oct. 13, 1976.

§ 7-13-720. Oath of voter.

In the event the oath is not printed at the top of the poll list as provided for in § 7-13-710, the managers of election shall administer to each person offering to vote an oath that he is qualified to vote at this election, according to the laws and Constitution of this State, and that he has not voted during this election.

HISTORY: 1962 Code § 23-400.52; 1952 Code § 23-346; 1950 (46) 2059; 1966 (54) 2340.

Cross references—

As to punishment for false swearing at elections, see § 7-25-150.

CASE NOTES

In the reception of votes the office of manager under this section is purely a ministerial one. *State v Bruce*, 3 Brev (5 SCL) 264.

The provisions as to the administering of the oath is not mandatory or imperative, but is directory only. *State v State Board*, 86 SC 451, 68 SE 676 (1910). See also, *Smith v Saye*, 130 SC 20, 125 SE 269 (1924).

And violation of such provision does not vitiate election.—It is well settled that the violation of such provisions of the section as merely regulate the conduct of elections is not, in the absence of fraud, vitiativ, unless it is made to appear that the result was thereby affected. *State v State Board*, 86 SC 451, 68 SE 676 (1910). See also, *Smith v Saye*, 130 SC 20, 125 SE 269 (1924).

§ 7-13-730. Delivery and marking of ballot; deposit into ballot box.

If the managers are reasonably sure that the person is entitled to vote, they shall then deliver a ballot to such person, and thereupon the voter shall immediately go to the booth and mark his ballot preparatory to depositing it in the ballot box. After the voter has marked his ballot, he shall fold it so as to leave the stub remaining attached thereto visible in such position that it can be detached without unfolding. When the ballot is returned, one of the managers shall detach and retain the stub, and the voter shall then deposit his folded ballot in the box.

HISTORY: 1962 Code § 23-400.53; 1952 Code §§ 23-323, 23-381; 1950 (46) 2059; 1966 (54) 2340.

ATTORNEY GENERAL'S OPINIONS

Sample ballots. — It is permissible to send out a sample ballot and thereafter for electors to take it with them into the

voting booth. Op. Att'y Gen. to Mr. Walter Mosley, Jr., June 24, 1980.

A person may carry in a sample ballot or notes concerning which candidate they desire to vote for and there is no direct prohibition against one voter giving these notes or sample ballots to another voter. Op. Atty. Gen. to Mr. Ladson F. Howell, Nov. 21, 1980.

This procedure would appear to come within the prohibition of this section if one voter was in some manner forcing another voter to accept this list against that voter's will. Op. Atty. Gen. to Mr. Ladson F. Howell, Nov. 21, 1980.

§ 7-13-740. Number and construction of booths; only one voter in booth at a time; speaking to voter prohibited.

There shall be provided at each polling precinct at least one booth. At least one booth shall be provided for each two hundred and fifty registered electors or a major fraction thereof of the precinct. The booths shall be made of wood, sheet metal or any other suitable substance, shall not be less than thirty-two inches wide, thirty-two inches deep and six feet six inches high, shall be provided with a curtain hanging from the top in front to within three feet of the floor and shall have a suitable shelf on which the voter can prepare his ballot. In general and special elections the booths shall be provided by the commissioners of election or other electoral board; in primaries by the county committee. But one voter shall be allowed to enter any booth at a time, and no one except as provided herein shall be allowed to speak to a voter while in the booth preparing his ballot.

HISTORY: 1962 Code § 23-400.54; 1952 Code § 23-348; 1950 (46) 2059; 1966 (54) 2340.

ATTORNEY GENERAL'S OPINIONS

When voter is permitted to have another person in booth.—A voter can have another person in the voting booth with him for the purpose of assistance only in the event that he is either unable to write or that he is physically unable to or physically incapacitated from preparing his ballot or voting. 1965-66 Ops. Atty. Gen., No 2005, p. 66.

A voter's wife is only permitted inside the voting booth with the voter in the event the voter is either illiterate or physically handicapped, and the voter's wife must have been designated by the voter as the bystander he wishes to enter the voting booth with him. 1965-66 Ops. Att'y. Gen., No 2005, p. 66.

§ 7-13-760. Time when voter must leave booth and voting place; voter must be alone in booth and must not talk while voting.

No voter, while receiving, preparing and casting his ballot, shall occupy a booth or compartment for a longer time than five minutes. No voter shall be allowed to occupy a booth or compartment already occupied by another, nor to speak or converse with anyone, except as herein provided, while in the booth. After having voted, or declined or failed to vote within five minutes, the voter shall immediately withdraw from the voting place and shall not enter the polling place again during the election.

HISTORY: 1962 Code § 23-400.55; 1952 Code § 23-349; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—
26 Am Jur 2d, Elections § 242.

ATTORNEY GENERAL'S OPINIONS

Electors may remain to serve as bystanders.—While a poll manager has the discretion under this section and § 7-13-810 to require persons to vote promptly and move away from the immediate vicinity of the voting booths or area where the ballots are marked, the clear intent of these sections is to prevent illegal voting and interference with the orderly election process. They are not designed to prevent the public

from observing the voting process and remaining in the vicinity of the polling place, so long as they are orderly and do not interfere with the voting process. Thus, if such persons are electors of the precinct, they may serve as bystanders when they are designated by the voter, whether or not they have already voted. Op. Att'y Gen. to Hon. C. Heyward Belser, Nov. 2, 1978.

§ 7-13-770. Unauthorized persons not allowed within guard rail; voter may obtain assistance.

No person other than a voter preparing his ballot is allowed within the guard rail, except as provided in this section. A voter who requires assistance to vote by reason of blindness, disability, or inability to read or write shall make the fact known to the managers. The chairman of the managers shall appoint one of the managers and any person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union to assist the voter in preparing his ballot. After the voter's ballot has been prepared, the person chosen by the voter to assist him shall immediately leave the vicinity of the guard rail. In lieu of the above assistance a person may have a member of his family or in the case of a blind voter, any person of his choosing render him assistance in voting without the presence of a manager. The term 'family' means spouse, father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, aunt, uncle, niece, or nephew.

HISTORY: 1962 Code § 23-400.56; 1952 Code § 23-350; 1950 (46) 2059; 1966 (54) 2340; 1970 (56) 1913; 1984 Act No. 445.

NOTE: The provisions of Section 7-13-770 have not been pre-cleared by the U.S. Department of Justice and cannot be put into effect. The 1982 Amendment to the Voting Rights Act would apply and must be used in lieu of this section.

The Voting Rights Act of 1965 was further amended in 1982, effective January 1, 1984, to provide that:

"Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice other than the voter's employer or agent of that employer or officer or agent of that voter's union."

ATTORNEY GENERAL'S OPINIONS

A literate person cannot receive assistance merely because he prefers to have someone in the booth with him to assist him in marking his ballot. 1965-66 Ops. Att'y Gen., No 2041, p 119.

Unless he is physically handicapped. —A person who is able to read and write is not authorized to receive assistance unless physically handicapped. 1965-66 Ops. Att'y Gen., No 2041, p 119.

The person chosen by the voter does not have to be a registered elector in the precinct. Op. Atty. Gen. to Mr. James B. Ellisor, Apr. 27, 1984.

There would be no prohibition to more

When assistance allowed. — A voter is allowed to have assistance in marking his ballot only if he is illiterate or physically unable to prepare his ballot. 1973-74 Op. Att'y Gen., No. 3768, p. 144.

The right to designate the bystander is exclusively with the voter and not with the chairman of the managers or the poll manager appointed by the chairman. 1978 Ops. Att'y Gen., No. 78-217, p.

than one voter in a precinct who are illiterate or physically handicapped choose the same person during the course of the voting day. Op. Atty. Gen. to Mr. James B. Ellisor, Apr. 27, 1984.

§ 7-13-771. Curb-side voting.

(A) Any elector who, because of physical handicap or age, cannot enter the polling place in the precinct in which he is registered to vote, or is unable to stand in line to vote, may vote outside that polling place in the closest available parking area utilizing the vehicle in which he has been driven, or has driven to the polls.

(B) When the managers are informed that a handicapped or elderly voter cannot enter the polling place or cannot stand in line to vote, the voter's identification required by Section 7-13-710 must be presented to the managers who must verify that the voter is eligible to vote. Upon verification of the voter's eligibility, two managers shall take the poll list and the voter's ballot to the voter in his vehicle outside the polling place. The managers shall notify any poll watchers present who, at their discretion, may accompany the managers as observers. Where the polling place uses machines for the purposes of voting, the poll managers must use the ballots provided under Sections 7-13-1470 or 7-13-1870 for those voters who cannot enter the polling place.

(C) No person other than the voter is permitted in the vehicle in

which the voter is casting his ballot unless the voter is entitled to assistance as provided in Section 7-13-770.

(D) After the voter has voted his ballot, he must fold it so that the secrecy of the ballot is preserved and return it to the managers waiting outside the vehicle. The managers shall carry the ballot to the ballot box, taking care not to violate the secrecy of the ballot, and after detaching the stub, deposit the ballot in the ballot box.

§ 7-13-780. Designation of voters who may receive assistance.

Only those persons who are unable to read or write or who are physically unable or incapacitated from preparing a ballot or voting shall be entitled to receive assistance of any kind in voting.

HISTORY: 1962 Code § 23-400.57; 1952 Code § 23-351; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections §§ 238-241.

29 CJS, Elections § 208.

If a person does not actually require assistance, but receives assistance, it would be grounds to challenge the ballot of that person. Op. Atty. Gen. to Mr. James B. Ellisor, Oct. 7, 1983.

A poll watcher or other registered elector may challenge the ballot of a voter on

the grounds of unauthorized assistance when the watcher or other elector has information or knows of his own personal knowledge that the voter is neither physically handicapped nor illiterate. Op. Atty. Gen. to Mr. James B. Ellisor, Oct. 7, 1983.

§ 7-13-790. Substitute for marred or defaced ballot.

If a voter shall mar or deface his ballot, he may obtain one additional ballot upon returning to the managers in charge of the ballots the ballot so marred or defaced with the stub attached. The manager in charge of the poll list shall change the number of the ballot on the poll list and place the marred or defaced ballot in a file. No voter shall be given a second ballot until he has returned the first one with the stub attached.

HISTORY: 1962 Code § 23-400.58; 1952 Code § 23-352; 1950 (46) 2059; 1966 (54) 2340.

§ 7-13-800. Write-ins shall be in handwriting of voter or authorized manager.

In casting a write-in ballot, the voter shall cast it in his own handwriting or in the handwriting of a duly authorized manager who is aiding the voter in casting his ballot when assistance is authorized by this Title.

HISTORY: 1962 Code § 23-400.59; 1952 Code § 23-324; 1950 (46) 2059; 1966 (54) 2340.

ALR and L Ed Annotations—

Validity of write-in vote where candidate's surname only is written in on ballot.
86 ALR2d 1025.

ATTORNEY GENERAL'S OPINIONS

The use of pasters or stickers is not permitted. 1965-66 Ops. Att'y Gen., No 2172, p 306.

§ 7-13-810. Prevention of illegal voting or taking too much time; challenging voters.

The managers of election shall prevent any person from voting when they have good reason to believe such person has already voted. They shall refuse to allow any person to vote who is not a registered elector or who has become disqualified for any cause to vote in such voting precinct. They may also prevent any voter from consuming more than five minutes in voting, but no manager shall examine, read or handle the ballot being voted or about to be voted by a voter or interfere in any way with the voting of any voter otherwise than as is herein provided. Any elector or qualified watcher may, and it shall be the duty of the managers of the election to, challenge the vote of any person who may be known or suspected not to be a qualified voter; *provided, however*, that such challenges by persons other than a manager shall be addressed to the manager and not directly to the voter. The manager shall then present such challenge to the voter and act in accordance with the provisions hereinafter made. All such challenges shall be made prior to the time a voter receives a paper ballot or enters into a voting machine and no challenge shall be considered after that time. *Provided*, that such challenges may be made at any time prior to counting the ballots as to absentee voters. Nothing contained herein shall affect the right of any elector or qualified watcher to challenge the vote of any person which is fraudulent or when the challenge is based on evidence discovered after the vote is cast.

HISTORY: 1962 Code § 23-400.60; 1952 Code § 23-353; 1950 (46) 2059; 1966 (54) 2540; 1974 (58) 2641.

Research and Practice References—

26 Am Jur 2d, Elections § 237.
29 CJS, Elections § 209.

CASE NOTES

Evidence given challenged voter.— The right to vote is a substantial right protected by law, and a voter whose right has been challenged should be allowed to hear the evidence against

his right, in order that he may have the opportunity to adduce evidence in rebuttal, or in support of his right. *Hyde v Logan*, 113 SC 64, 101 SE 41 (1919).

ATTORNEY GENERAL'S OPINIONS

Any manager may handle challenge. — There is no requirement in the law that only the "head" or chairman of the poll managers handle challenged ballots. Any manager may handle a challenge to a person's right to vote. Op. Atty Gen. to Hon. Joyce C. Hearn, Nov. 6, 1978.

Registration certificate lacking attestation as to elector's signature.—A challenge by a poll watcher of a vote is not proper, necessarily, where a voter's registration certificate merely lacks the attestation of a board member, deputy member or clerk as to the signature of the elector appearing thereon. 1970-71 Ops. Atty Gen., No 3193, p 167.

A poll watcher or other registered elector may challenge the ballot of a voter on the grounds of unauthorized assistance when the watcher or other elector has information or knows of his own personal

knowledge that the voter is neither physically handicapped nor illiterate. Op. Atty. Gen. to Mr. James B. Ellis, Oct. 7, 1983.

A woman whose name appears on the registration list under her maiden name but has since married and changed her name would not be denied the right to vote. Op. Atty. Gen. to Mr. John K. deLoach, Jr., Oct. 13, 1976.

If a person does not actually require assistance, but receives assistance, it would be grounds to challenge the ballot of that person. Op. Atty. Gen. to Mr. James B. Ellis, Oct. 7, 1983.

If a person attempting to vote by absentee ballot is not on the list of persons entitled to vote by absentee ballot, it would be grounds to challenge the ballot Op. Atty. Gen. to Ms. Eloise P. Kirkland, May 28, 1976.

§7-13-820. Voting by person whose name is not on precinct list.

When any person presents himself with a valid South Carolina driver's license or other form of identification required by Section 7-13-710, if he is not licensed to drive, at the polling precinct and his name does not appear on the registration book a manager must call the county registration office from any phone available at, or away from, the polling precinct. The manager shall give only the name of the elector as it appears on the driver's license or other form of identification. The member of the registration board taking the call must check the records of the board and if the name of the person is found and he is eligible to vote in the precinct the date of birth of the person must be read to the manager who must then ask the person for such date. Upon answering correctly, the person may vote. When a manager is to make a call for such purpose, he must notify the poll watchers who may accompany the manager and have the information repeated to each of them. The manager must fill in the information on the driver's license or other form of identification on a form provided for that purpose before permitting such person to vote. In the event such call is a toll call it may be made collect and the registration office must accept the call.

If the name cannot be verified by the registration board, or if a phone is not available, the poll manager or his designee may permit such person to vote after following the procedures set forth in Section 7-13-830 and the voter must be processed as a challenged vote. The poll manager must be listed as the challenger.

The provisions of this section are in addition to the procedure provided in Section 7-5-440.

HISTORY: 1962 Code § 23-400.600:1; 1974 (58) 2641; 1978 (61) 1539; 1984 Act No. 510.

ATTORNEY GENERAL'S OPINIONS

A person who has been deleted from the list of registered voters should make a personal request for reinstatement of the registration board; hearsay information from a third party would be insufficient. Op. Atty. Gen. to Ms. Minnie G. Johnson, Nov. 5, 1979.

If a person attempting to vote by absentee ballot is not on the list of persons entitled to vote by absentee ballot, it would

be grounds to challenge the ballot. Op. Atty. Gen. to Ms. Eloise P. Kirkland, May 28, 1976.

A woman whose name appears on the registration list under her maiden name but has since married and changed her name would not be denied the right to vote. Op. Atty. Gen. to Mr. John K. deLoach, Jr., Oct. 13, 1976.

§ 7-13-830. Procedure when voter challenged.

When any person is so challenged the manager shall explain to him the qualifications of an elector and may examine him as to the same; and if the person insists that he is qualified and the challenge is not withdrawn his vote shall be received and placed in an envelope on which shall be written the name of the voter and that of the challenger. The challenged votes shall be kept separate and apart and not counted, but turned over to the commissioners of election or the county committee having supervision of the election. At the meeting specified in either § 7-17-10 or 7-17-510, whichever is applicable, this authority shall hear all objections to such votes and when no person appears to sustain an objection made at the polls the ballot shall be removed from the envelope and mingled with the regular ballots and counted. When the challenger appears, or produces witnesses in support of the challenge, the committee in charge shall proceed to hear and determine the question. Its decision shall be final. *Provided, however,* that if the voting at the voting place is being done upon voting machine, the managers shall provide a paper ballot which shall be placed in an envelope and treated as herein provided.

HISTORY: 1962 Code § 23-400.61; 1952 Code § 23-383; 1950 (46) 2059; 1966 (54) 2340; 1973 (58) 1861.

Research and Practice References—

26 Am Jur 2d, Elections § 237.

29 CJS, Elections § 209.

ATTORNEY GENERAL'S OPINIONS

Failure of the Board of Canvassers to hear objections to challenged ballots at their first meeting after the election, as required by this section [Code 1962 § 23-400.61], should not have the ef-

fect of denying the voter his right to cast ballot nor the person elected his right to the office. 1971-72 Ops. Att'y Gen., No 3419, p 297.

CASE NOTES

The state committee properly excluded certain ballots that were found outside ballot boxes where the requirement directing that such votes be decided at a meeting held pursuant to § 7-17-510 was not fulfilled. Gregory v South Carolina Democratic Executive Committee (1978,SC) 247 SE2d 439.

County Board of Canvassers should have held hearing on challenges that certain voters were not residents of precinct in which they voted where challenger, precinct manager, was present for purposes of sustaining challenges and thus, requirement of § 7-13-830 was met; challenger does not forfeit his right to challenge by failing to appear at meeting about which he was not told; thus, where Board did not give usual notice of its meeting, challenged ballots must be canvassed after notice to all interested parties; State Board of Canvassers' finding that evidence was uncontroverted that 15 ballots had been cast in given precinct, but in fact poll list and ballots established that only 9 votes were cast, must be reversed, and since all reasonable inferences must be drawn in favor of validity of contested election, choice between two inferences must be made in favor of validity of contested

election. Trapp v South Carolina Board of State Canvassers (1979, SC) 255 SE2d 670.

Challenger must be given notice. — While this section requires challenged ballots to be counted where no one appears to support the challenge at a proper meeting of the county board, a challenger does not forfeit his right by failing to appear at a meeting about which he was not told. Just as a voter must be given notice and an opportunity to be heard on the challenge of his ballot, so must a challenger. Trapp v. South Carolina Board of State Canvassers, 255 S.E.2d 670 (1979).

New election held not required. — A new election, asserted to be required because of the alleged disappearance of six ballots, was in fact not required, where the State Board of Canvassers erred in finding the evidence as to the lost ballots uncontroverted, the physical evidence also yielding the reasonable inference that there were no missing ballots, since all reasonable inferences must be drawn in favor of the validity of contested elections. Trapp v. South Carolina Board of State Canvassers, 255 S.E.2d 670 (1979).

§ 7-13-840. Ballot boxes; number, location, construction, color, labeling.

There shall be provided for each voting place a sufficient number of boxes to meet the anticipated requirements. In general and special elections they shall be provided by the commissioners of election or other electoral board; in primaries by the county committee. There shall always be provided at least one box for each kind of ballot used. An opening shall be made in the lid of each box not larger than sufficient for a single ballot to be inserted therein at one time, through which the ballot shall be inserted by the person voting and by no other. Each box shall be provided with a sufficient lock and shall be publicly opened and

inspected, to show that it is empty and secure, and locked just before the opening of the poll. The keys shall be returned to the managers and the box shall not be opened during the election. Each box shall be labeled in plain and distinct roman letters with the office or officers voted for and shall be painted in a color corresponding to the proper ballot to be placed therein, or have sample ballots conspicuously affixed to the box in which like ballots are to be deposited, and the managers, on the demand of the voter, shall be required to read to him the names of the boxes. The ballot boxes shall be so located as to be in view of the persons outside of the rail at the polling place during the time of the voting.

HISTORY: 1962 Code § 23-400.62; 1952 Code § 23-354; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 231.

29 CJS, Elections § 194.

§ 7-13-850. Closing polls; voters waiting may vote.

At the time for closing the polls the chairman of the managers shall announce that the polls are closed, but any voters who are in the process of voting or are present waiting to vote shall be allowed to vote before the polls close.

HISTORY: 1962 Code § 23-400.63; 1952 Code § 23-355; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 227.

29 CJS, Elections § 198.

§ 7-13-860. Watchers; appointment, qualifications, identification, and conduct.

Each candidate who is not unopposed in the primary and each candidate in a general election may appoint a watcher for any voting place that he may desire. *Provided, however,* that in any general or special election, all candidates who are certified by a political party shall be jointly represented at each polling place that they may desire by not more than two watchers from such party for each one thousand registered voters or fraction thereof registered at such polling place. Every watcher appointed hereunder must be a qualified voter in the county where he is to watch, and must be certified to the managers of the voting precinct to which assigned, in writing, signed by the candidate or by an appropriate party official as having been designated to so act. Such watchers shall, at all times, wear appropriate, visible identification specifying the candidate or party which they represent. No such watcher shall conduct himself in a manner that will interfere in the orderly conduct of the election or influence any voter in the casting of his ballot.

HISTORY: 1962 Code § 23-400.64; 1952 Code § 23-345; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 293.
29 CJS, Elections § 200.

ATTORNEY GENERAL'S OPINIONS

Placement of pollwatcher. — The managers have the authority to place a pollwatcher in any area that the manager designates; however, the watcher should always be placed in an area where the election process can be clearly observed. Op. Att'y Gen. to Hon. Joyce C. Hearn, Nov. 6, 1978.

The watcher should be given full opportunity to observe the election process and to see the signatures on the poll list, but the activity of the watcher should not be allowed to interfere with the orderly conduct of the election. Op. Att'y Gen. to Hon. Joyce C. Hearn, Nov. 6, 1978.

The actual physical placement of the watchers is one which each manager must make on an individual basis. The decision of where the pollwatcher shall be stationed would depend in part on the physical set-up of the polling precinct, the general conduct of the individual watchers, etc. Op. Att'y Gen. to Hon. Joyce C. Hearn, Nov. 6, 1978.

There is no prohibition to an off-duty officer acting as a poll-watcher, if he is otherwise qualified and does not participate in uniform. Op. Atty. Gen. to Mr. Donald Fowler, Nov. 1, 1976.

ARTICLE 9

VOTING PROVISIONS APPLICABLE TO PRIMARY ELECTIONS ONLY

Sec.

7-13-1010. Additional oath of voters.

7-13-1020. Absentee voting not permitted in primaries; exceptions.

7-13-1030. Voting by National Guard when on duty.

7-13-1040. No person to vote in more than one primary on same day.

§ 7-13-1010. Additional oath of voters.

The managers at each box shall require every voter to take the following additional oath and pledge: "I do solemnly swear or affirm that I am duly qualified to vote at this primary election and that I have not voted before at this primary election or in any other party's primary election or officially participated in the nominating convention for any vacancy for which this primary is being held."

HISTORY: 1962 Code § 23-400.71; 1952 Code § 23-579; 1950 (46) 2059; 1964 (53) 1809; 1966 (54) 2340; 1972 (57) 2441.

Research and Practice References—

25 Am Jur 2d, Elections § 148.
26 Am Jur 2d, Elections § 291.

CASE NOTES

The real intent of this section [Code 1962 § 29-400.71] is to prevent a voter from participating in nominating primaries of two parties in the same election. *Gordon v Executive Comm. of Democratic Party*, 335 F Supp 166 (DSC 1971).

Locking a citizen into a party is unconstitutional.—No sound or compelling purpose can possibly justify “locking” a citizen into a party and denying to him for a full year freedom to change parties. Such an arbitrary restraint upon the voter is both unreasonable and unconstitutional. *Gordon v Executive Comm. of Democratic Party*, 335 F Supp 166 (DSC 1971).

Thus former provision of oath was unconstitutional.—Before the 1972 amendment, the concluding phrase of the oath required by this section [Code 1962 § 29-400.71] purported to disqualify a voter from exercising his freedom of the ballot in the primary of one party merely because he had voted in the primary of another party within one year, and was an unconstitutional limitation upon the voter's freedom of

the ballot. *Gordon v Executive Comm. of Democratic Party*, 335 F Supp 166 (DSC 1971).

But the purpose of the section could be sustained without giving effect to the unconstitutional provision of the oath as it stood before the 1972 amendment. Excising this unconstitutional limitation, the section only denied to the voter the right to participate in two primary elections preliminary to the same general or special election. *Gordon v Executive Comm. of Democratic Party*, 335 F Supp 166 (DSC 1971).

Participation in organizational meeting. — The only reasonable inference that can be drawn from participation in a political party's precinct club organizational meeting is membership in that political party; such participation does not give rise to an inference that the elector has “officially participated” in that party's nominating convention within the meaning of this section. *Drawdy v South Carolina Democratic Executive Committee* (1978, SC) 247 SE2d 806.

Persons taking oath are not disqualified to vote in general election against candidate nominated in primary elec-

tion. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

ATTORNEY GENERAL'S OPINIONS

A person who votes in a primary of one party may not subsequently vote in a primary run-off of another party.

1973-74 Op. Atty Gen., No. 3770, p. 146.

A straw vote “Presidential primary” in March is not a legally recognizable election procedure and has no more force or effect than the response to a telephone inquiry by a poll taker as to the Presidential choice of individuals. Op. Atty. Gen. to Mr. T. Allen Legare, Jr., Jan. 15, 1980.

Participation in the March “Presidential Primary” will not affect subsequent participation in any regularly scheduled primary conducted in accordance with South Carolina law. Op. Atty. Gen. to Mr. T. Allen Legare, Jr., Jan. 15, 1980.

§ 7-13-1020. Absentee voting not permitted in primaries; exceptions.

Absentee enrollment and absentee voting may not be provided for by party rules or permitted in any primary election, except as provided in § 7-13-1030 or in Chapter 15 of this Title.

HISTORY: 1962 Code § 23-400.77; 1952 Code § 23-384; 1950 (46) 2059; 1953 (48) 423; 1960 (51) 1598; 1966 (54) 2340.

§ 7-13-1030. Voting by National Guard when on duty.

In case the National Guard of South Carolina is called to active duty, is mobilized or is participated in field training, the State committee shall provide for the voting of all members of the National Guard qualified to vote, whether such members are within the State or elsewhere.

HISTORY: 1962 Code § 23-400.78; 1952 Code § 23-385; 1950 (46) 2059; 1953 (48) 423; 1960 (51) 1598; 1966 (54) 2340.

§ 7-13-1040. No person to vote in more than one primary on same day.

No person shall be entitled to vote in more than one party primary election held the same day.

HISTORY: 1962 Code § 23-400.79; 1952 Code § 23-382; 1950 (46) 2059; 1966 (54) 2340.

CASE NOTES

Intent of Code 1962 § 23-400.71 (Code 1976 § 7-13-1030) is obvious from this section [Code 1962 § 23-400 Code 1976 7-13-1040.]—The real intent of Code 1962 § 23-400.71, Code 1976 § 7-13-1010, to prevent a voter from participating in nominating primaries of two parties in the same election, is obvious from this section [Code 1962 § 23-400.79] [Code 1971 7-13-1030] [Code 1967 7-13-1040], which proscribes specifically a voter's participation in more than one primary election preliminary to the same general or special election. *Gordon v Executive Comm. of Democratic Party*, 335 F Supp 166 (DSC 1971).

ATTORNEY GENERAL'S OPINIONS

The requirement that each individual voter vote only in one party primary is authorized by the laws of this State and is a valid requirement. 1973-74 Op. Atty Gen., No. 3827, p. 231.

ARTICLE 11

CANVASSING AND COUNTING OF BALLOTS

SEC.

7-13-1110. Counting ballots and declaration of result; volunteer personnel may assist.

7-13-1120. Disposition of improperly marked ballots.

- 7-13-1130. Disposition of ballots found in wrong box and ballots folded together.
- 7-13-1140. Procedure when too many ballots found in box or too many votes tabulated.
- 7-13-1150. Accounting for ballots after election; returns; delivery of poll lists and other matters; unused ballots.
- 7-13-1160. Reporting of election results to State Election Commission.
- 7-13-1170. Ordering of new election by Governor.

§ 7-13-1110. Counting ballots and declaration of result; volunteer personnel may assist.

At the close of the election the managers and clerk shall immediately proceed publicly to open the ballot boxes and count the ballots therein and shall continue such count, without adjournment or interruption, until it is completed. They shall then make and sign such statement of the result thereof as the nature of the election shall require.

Managers of election are authorized to use additional volunteer personnel in counting the ballots. None of such personnel shall be a candidate or watcher for a candidate for an office voted on in the election and shall be required to take the following oath prior to assuming their duties: "I do solemnly swear or affirm that I am not a candidate or watcher in this election, am a qualified elector of this county, that I will count the ballots entrusted to my care in a fair and impartial manner, and make to the best of my ability a correct tabulation of the results." The managers shall be required to make a list of all such counters and turn such list in with other election material. The provisions of this section shall not apply to the counting of ballots at any precinct using vote recorders which require the ballot cards to be counted with the use of a tabulating machine.

HISTORY: 1962 Code § 23-400.91; 1952 Code § 23-356; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1970 (56) 1998.

Research and Practice References—
29 CJS, Elections §§ 221 et seq.

§ 7-13-1120. Disposition of improperly marked ballots.

If a voter marks more names than there are persons to be elected or nominated to an office or if for any reason it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office; but this shall not vitiate the ballot, so far as properly marked. Nothing herein shall be construed to prevent any voter in a general or special election from voting for any qualified person, other than those

whose names are printed on the ballot, by writing in the name of the person opposite the office.

HISTORY: 1962 Code § 23-400.92; 1952 Code § 23-357; 1950 (46) 2059; 1966 (54) 2340; 1972 (57) 2383.

Research and Practice References—

26 Am Jur 2d, Elections § 292.

29 CJS, Elections § 227.

CASE NOTES UNDER FORMER STATUTES

Name of party nominee on write-in ballot need not be scratched out.—Neither this section nor any other provision of the present general election law requires, expressly or by necessary implication, that in order to vote for a candidate other than the party nominee, the voter must not only write the name of his candidate on the ballot opposite the name of the office, but also scratch out the name of the party nominee. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

And write-in ballot counted where voter marked party circle.—This section does not, either expressly or by necessary implication, forbid the counting of a ballot for a "write-in" candidate because the voter, in addition to writing in the name of his candidate,

has marked the party circle. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

A candidate's challenge to results of an election to fill two vacancies on the county school board was timely even though it did not comply with the filing requirements of § 7-17-30 where the County Board of Canvassers had failed to canvass the votes or make a declaration of the results as required by § 7-17-20 and where the challenge had been filed prior to the county board's denial of the candidate's protest, which was the only official action ever taken by the county board relative to the election; the election was properly invalidated on the ground that the "vote for two, strike two" voting instructions were violative of § 7-13-1120 since they imposed full slate voting. *Sims v Ham*, 275 SC 369, 271 SE 2d 316 (1980).

ATTORNEY GENERAL'S OPINIONS

Voting straight ticket plus member of opposition. — The votes of a voter voting a straight party ticket and later crossing over and voting for a specific

candidate of an opposition party on the same ballot should be counted. Op. Atty Gen. to Mr. James B. Ellisor, Sept. 3, 1976.

When a person specifically votes for an individual by making a mark by that name and then also writes in a name for that office and does not make any other mark on the ballot, it would appear that it would be

impossible to determine the intention of the voter and the vote should be discounted as an overvote. Op. Atty. Gen. to Mr. Charles M. Timmons, Sept. 24, 1980.

§ 7-13-1130. Disposition of ballots found in wrong box and ballots folded together.

If ballots shall be found on opening the box, upon which shall appear the name of an office or the name of a person in connection with an office other than that for which the box in which such ballot is found shall be designated and labeled, these ballots shall

be counted, if in counting the ballots for that office the number of ballots does not exceed the number of names on the poll list. If the number of names on the poll list is exceeded by counting all of the ballots, then none of the ballots for that office found in the incorrect box shall be counted. If, in counting, two or more like ballots shall be found folded together compactly, one shall be counted. The other shall be destroyed. But if they bear different names, all shall be destroyed and none counted.

HISTORY: 1962 Code § 23-400.93; 1952 Code § 23-358; 1950 (46) 2059; 1965 (54) 242; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections § 292.

29 CJS, Elections § 227.

§ 7-13-1140. Procedure when too many ballots found in box or too many votes tabulated.

If more ballots shall be found on opening the box or if more ballots, which are tabulated by vote recorder equipment, or if the number of votes tabulated on voting machines in any polling place exceeds the number of voters listed on the poll list at such polling place, the vote total for each candidate or issue shall be reduced by that fraction of the excess vote cast that his total vote bears to the total number of votes cast in the polling place. Fractional parts of single votes shall be disregarded.

If the number of votes cast by any type ballot or on machines in any polling place exceeds the number listed on the polling list by ten percent or more, the county executive committee or the county election commission, as the case may be, shall order a new primary or election at the polling place concerned if the outcome of the election could be affected. Only those who signed the poll list shall be permitted to vote in any such new primary or election.

HISTORY: 1962 Code § 23-400.94; 1952 Code § 23-359; 1950 (46) 2059; 1966 (54) 2340; 1973 (58) 1860.

Research and Practice References—

26 Am Jur 2d, Elections § 292.

29 CJS, Elections § 227.

§ 7-13-1150. Accounting for ballots after election; returns; delivery of poll lists and other matters; unused ballots.

When the canvassing and counting of the votes are completed, the chairman of the managers, or one of them to be designated in writing by the managers, shall deliver to the commissioners of election the poll list, the boxes containing the ballots and a written return of the result of the election in the voting precinct. Managers shall account to the commissioners of election of the county for all ballots delivered to them and make the following returns, (a) the number of official ballots furnished to each voting precinct,

(b) the number of official ballots spoiled and returned by voters, (c) the number of official ballots returned to the commissioners of election and (d) the number of official ballots actually voted.

The commissioners of election shall keep in possession all unused ballots, as well as those that have been spoiled, until the time for contesting the election has expired. Any ballot that has been lost must be accounted for by a certificate from the chairman of the managers of the particular precinct covering the circumstances.

HISTORY: 1962 Code § 23-400.95; 1952 Code §§ 23-325, 23-386; 1950 (46) 2059; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections §§ 296 et seq.
29 CJS, Elections §§ 229 et seq.

§ 7-13-1160. Reporting of election results to State Election Commission.

Within twenty-four hours of the completion of the canvassing and counting of ballots, the persons in charge of each such election in each county shall notify the State Election Commission of the unofficial results of such election in each such county; *provided, however*, that failure to comply with the provisions of this section shall not invalidate the votes cast therein.

HISTORY: 1962 Code § 23-400.96; 1966 (54) 2340; 1968 (55) 2316.

§ 7-13-1170. Ordering of new election by Governor.

Whenever any election official or officials of any political subdivision of this State charged with ordering, providing for or holding an election has or have neglected, failed or refused to order, provide for or hold such election at the time appointed therefor, or in the event such election shall result in a tie vote leaving the matter at issue undecided or shall for any reason be declared void by competent authority, and any of these facts shall be made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for such a contingency, order an election or a new election to be held at such time and place or places, and upon such notice being given as to him may seem adequate to insure the will of the electorate being fairly expressed. To that end he may designate the existing election official or officials or such other person or persons as he may appoint to perform the necessary official duties pertaining to such election and to declare the result thereof.

HISTORY: 1962 Code § 23-400.97; 1952 Code § 23-326; 1942 Code § 2350; 1932 Code § 2350; 1931 (37) 272; 1966 (54) 2340.

Research and Practice References—

26 Am Jur 2d, Elections §§ 200, 215.

CASE NOTES UNDER FORMER STATUTES

A school district is a political subdivision of the State. *Easler v Maybank*, 191 SC 511, 5 SE2d 288 (1939).

Satisfaction of the Governor.—The legislature never intended that the Governor could close his eyes to an admitted fact and say that such fact

had not been made to appear to his satisfaction. *Easler v Maybank*, 191 SC 511, 5 SE2d 288 (1939).

Mandamus issued compelling Governor to order new elections.—*Easler v Maybank*, 191 SC 511, 5 SE2d 288 (1939).

ATTORNEY GENERAL'S OPINIONS

Governor may order special election when governing body refuses to call election as required by Section 4-9-90; when a councilman is suspended and replacement appointed upon conviction/plea of

suspended officer, temporary appointee may continue to hold until successor is elected. 1980 Op. Att'y Gen., No. 80-45, p 91.

Where statutes provide for an election and none is held, Governor has statutory authority to order an elec-

tion. 1968-69 Ops. Att'y Gen., No 2608, p 1.

ARTICLE 13 VOTE RECORDERS

SEC.

- 7-13-1310. Authority of counties to procure and authorize use of vote recorders.
- 7-13-1320. Use of vote recorders in certain precincts; use of vote recorders of different kinds; number and capacity of vote recorders.
- 7-13-1330. Examination of vote recorders and approval by State Election Commission; revocation of approval; conflicts of interest.
- 7-13-1340. Requirements for vote recorders.
- 7-13-1350. Payment for vote recorders.
- 7-13-1360. Form and contents of ballot labels; primary elections.
- 7-13-1370. Ballot cards.
- 7-13-1380. Write-in votes.
- 7-13-1390. Labeling, preparation, and testing of vote recorders; custodians and deputies; examination by interested persons.
- 7-13-1400. Delivery of vote recorders; duties of officials at polling places.
- 7-13-1410. Duties of officials after closing of polls; review of ballots; duplicate ballots.
- 7-13-1420. Observation by poll watchers after polls close.
- 7-13-1430. Counting stations; processing and counting of ballots and preparation of summary sheets.
- 7-13-1440. Witnesses are to observe at counting station.
- 7-13-1450. Public display of vote recorders preceding election.
- 7-13-1460. Use of paper ballots where use of vote recorders is not possible or practicable.
- 7-13-1470. Procedure where vote recorder becomes out of order.
- 7-13-1480. Custody, storage, and care of vote recorders.
- 7-13-1490. Regulations, instructions and forms.
- 7-13-1500. Oath of person preparing or operating tabulating devices.

§ 7-13-1310. Authority of counties to procure and authorize use of vote recorders.

The governing body of any county, subject to the written approval of a majority of the county legislative delegation, including a majority of the Senators, may at any regular meeting, or at a special meeting called for the purpose, authorize the use of vote recorders for recording and computing the vote at elections held in the county upon such terms and conditions as the governing body may prescribe. The governing body shall purchase or otherwise procure vote recorders conforming to the requirements of this article.

HISTORY: 1962 Code § 23-400.101; 1970 (56) 2022.

Cross references—

As to voting machines, see §§ 7-13-1610 et seq.

§ 7-13-1320. Use of vote recorders in certain precincts; use of vote recorders of different kinds; number and capacity of vote recorders.

(a) The use of vote recorders may be authorized for use in some precincts in a county without requiring their use in all precincts.

(b) Vote recorders of different kinds may be used for different precincts in the same county.

(c) The county election commission shall provide vote recorders in such numbers as it deems necessary in good working order and of sufficient capacity to accommodate the names of all candidates for all party offices and nominations and public offices which, under the provisions of existing laws and party rules, are to be voted for at any primary or other election.

HISTORY: 1962 Code § 23-400.102; 1970 (56) 2022.

§ 7-13-1330. Examination of vote recorders and approval by State Election Commission; revocation of approval; conflicts of interest.

(a) Before any kind of vote recorder is used at any election it shall be approved by the State Election Commission which shall examine such vote recorder and shall make and file in its office a report, attested by the signature of its executive director, stating whether, in its opinion, the kind of vote recorder so examined can be safely used by electors at elections, as provided by law. If this report states that the vote recorder can be so used, the recorder shall be deemed approved and vote recorders of its kind may be adopted for use at elections, as herein provided.

(b) No kind of vote recorder not so approved shall be used at any election and if, upon the reexamination of any type vote

recorder previously approved, it shall appear that the vote recorder so reexamined can no longer be safely used by electors at elections as provided by law, the approval of the same shall forthwith be revoked by the State Election Commission, and no such type vote recorder shall thereafter be purchased for use or used in this State.

(c) When a vote recorder has been so approved, no improvement or change that does not impair its accuracy, efficiency or capacity shall render necessary a reexamination or reapproval of the vote recorder, or of its kind.

(d) Any person or company requesting an examination of any type of vote recorder shall pay an examination fee of twenty-five dollars to the State Election Commission. The State Election Commission may at any time, in its discretion, reexamine any vote recorder.

(e) Neither a member of the State Election Commission, any custodian, nor a member of a county governing body shall have any pecuniary interest in any vote recorder, or in the manufacture or sale thereof.

HISTORY: 1962 Code § 23-400.103; 1970 (56) 2022.

§ 7-13-1340. Requirements for vote recorders.

No vote recorder shall be adopted or used unless it shall, at the time, satisfy the following requirements:

(a) It shall provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted;

(b) It shall permit each elector, at other than primaries, to vote a straight party or body ticket, with the exception of candidates for the offices of presidential electors, in one operation; and, in one operation, to vote for all the candidates of one party or body for presidential electors; and, in one operation, to vote for all the candidates of one party or body for every office to be voted for, except those offices as to which he votes for individual candidates and the offices of presidential electors;

(c) Except as provided in subsection (b) for presidential electors, it shall permit each elector, at other than primaries, to vote a ticket selected from the nominees of any and all parties or bodies, from independent nominations, and from persons not in nomination;

(d) It shall permit each elector to vote, at any election, for any person and for any office for whom and for which he is lawfully entitled to vote, whether or not the name of such person or persons appears upon a ballot label as a candidate for election, and to vote for as many persons for an office as he is entitled to vote for, and to vote for or against any question upon which he is entitled to vote;

(e) When used in conjunction with a tabulating machine, it shall preclude the counting of votes for any candidate, or upon any question, for whom or upon which an elector is not entitled to vote, and shall preclude the counting of votes for more persons for any office than he is entitled to vote for or for fewer than he is required to vote for, and shall preclude the counting of votes for any candidate for the same office or upon any question more than once;

(f) It shall permit voting in absolute secrecy, so that no person can see or know for whom any other elector has voted or is voting, save an elector whom he has assisted or is assisting in voting, as prescribed by law;

(g) It shall be constructed of material of good quality, in a neat and workmanlike manner;

(h) It shall, when properly operated, record correctly and accurately every vote cast;

(i) It shall be so constructed that an elector may readily learn the method of operating it; and

(j) It shall be safely transportable.

HISTORY: 1962 Code § 23-400.104; 1970 (56) 2022.

§ 7-13-1350. Payment for vote recorders.

The governing body of any county which adopts vote recorders in the manner provided for by this article shall, upon the purchase thereof, provide for payment therefor by the county.

HISTORY: 1962 Code § 23-400.105; 1970 (56) 2022.

§ 7-13-1360. Form and contents of ballot labels; primary elections.

(a) The ballot labels shall be printed in black ink, upon clear, white material, of such size and arrangement as will suit the construction of the vote recorder, and in plain, clear type so as to be easily readable by persons with normal vision.

(b) The arrangement of offices, names of candidates and questions upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of same on paper ballots. *Provided, however,* that such form may be varied in order to present a clear presentation of candidates and questions to the electors. In the event that there are more candidates for any office than can be placed upon one page, the label shall be clearly marked to indicate that the names of candidates for the office are continued on the following page.

(c) The form and arrangement of ballot labels shall be prescribed and prepared by the State Election Commission.

(d) In primaries, separate vote recorders may be used for each political party. If the same vote recorder is used for two or more political parties on the same day, the ballot cards of each party shall be clearly identified and so designed that only votes cast for candidates of that party will be counted by the tabulating machine.

HISTORY: 1962 Code § 23-400.106; 1970 (56) 2022.

§ 7-13-1370. Ballot cards.

Ballot cards shall be of suitable design, size and stock, as prescribed by the State Election Commission, to permit processing by a tabulating machine. A serially-numbered stub and strip shall be attached to each ballot card in a manner and form similar to that prescribed by law for paper ballots.

HISTORY: 1962 Code § 23-400.107; 1970 (56) 2022.

§ 7-13-1371. Instructions on Optical Scanning ballot provided for.

(a) Ballot cards used in conjunction with an optical scanning device must include an instruction to vote both sides of the ballot card. This instruction must appear conspicuously at the top and at the bottom of the front side of the ballot card and must be printed in bold-face type at least as large as the largest type on the ballot card.

(b) Any ballot card used in conjunction with an optical scanning device during a presidential election or primary must be designed so that the front of the ballot card contains only the instructions for voting for president and the names of the presidential candidates. The instructions for voting the remainder of the ballot card and the names of the remaining candidates must be placed on the reverse side of the ballot card or they must be placed on a separate ballot card.

(c) The State Election Commission must establish the form of a sign to be displayed in any polling place utilizing an optical scanning device. This sign must notify voters to vote both sides of the ballot card and must be displayed in three conspicuous places in the polling place.

§ 7-13-1380. Write-in votes.

Electors shall be permitted to cast write-in votes. The design of the ballot card shall permit the managers in counting the write-in votes to determine readily whether an elector has cast any write-in vote not authorized by law. The State Election Commission in specifying the form of the ballot shall provide for ballot secrecy in connection with write-in votes.

HISTORY: 1962 Code § 23-400.108; 1970 (56) 2022.

§ 7-13-1390. Labeling, preparation, and testing of vote recorders; custodians and deputies; examination by interested persons.

(a) The election officials of each county shall cause the proper ballot labels to be placed on each vote recorder which is to be used in any election within such county and shall cause each vote recorder to be placed in proper order for voting.

(b) The election officials of each county shall appoint one custodian of vote recorders, and such deputy custodians as may be necessary, whose duty it shall be to prepare the vote recorders to be used in county elections. Each custodian and deputy custodian shall receive such compensation as provided for in the annual county appropriation. Such custodian shall, under the direction of the county election officials, have charge of and represent them during the preparation of the vote recorders as required by this article, and he and the deputy custodians, whose duty it shall be to assist him in the discharge of his duties, shall serve at the pleasure of the county election officials.

(c) On or before the third day preceding an election, the county election officials shall have the tabulating machines tested to ascertain that they will correctly count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be made at least five days prior thereto. Representatives of political parties and bodies, candidates, news media and the public shall be permitted to observe such tests. The test shall be conducted by processing a preaudited group of ballot cards clearly marked for such purpose, not to exceed fifty for each candidate or question, so punched or marked as to record a predetermined number of valid votes for each candidate and on each question, and shall include for each office one or more ballot cards which have votes in excess of or less than the number allowed by law in order to test the ability of the tabulating machine to reject such votes. The tabulating machine shall not be approved unless it produces an errorless counting. If any error is detected, the cause therefor shall be ascertained and corrected, and an errorless count shall be made before the machine is approved. The same test shall be repeated immediately before the start of the official count of the ballot cards and at the conclusion of such count. The county election officials or custodian shall also prepare the vote recorders for voting at the various polling places to be used in the election. In preparing the vote recorders, they shall arrange the recorders and the ballot labels so that they meet all requirements of voting and counting at such primary or election, thoroughly inspect and test the vote recorders, and file a certificate, as prescribed by the State Election Commission, in the office of the county election officials that the recorders are in proper order with correct ballot labels.

(d) Prior to the election, no county election officials, nor custodian, nor other employee shall in any way prevent free access to and examination of all voting machines which are to be used at the election under proper supervision and, at reasonable times, by any interested persons.

HISTORY: 1962 Code § 23-400.109; 1970 (56) 2022.

§ 7-13-1400. Delivery of vote recorders; duties of officials at polling places.

(a) The county election officials shall deliver the proper vote recorder or vote recorders, properly furnished with ballot labels, to the polling places at least one hour before the time set for opening the polls at each election, and shall cause each vote recorder to be set up in the proper manner for use in voting. Such election officials shall place each vote recorder in a voting booth so that the ballot labels on the recorder can be plainly seen by the poll officers when not being voted on.

(b) The county election officials shall provide ample protection against molestation of and injury to the vote recorder and, for that purpose, shall call upon any law-enforcement officer to furnish such assistance as may be necessary, and it shall be the duty of the law-enforcement officer to furnish such assistance when so requested by such officials.

(c) The poll manager shall furnish for each vote recorder at least one hour before the opening of the polls:

(1) Sufficient light to enable electors, while in the voting booth, to read the ballot labels and suitable for the use of poll officers in examining the vote recorder.

(2) Two sample ballots printed on a single sheet of white paper or a number of sheets stapled together which shall be a reasonable facsimile of the ballot labels to be used in the primary or election, and accompanied by directions for voting on the vote recorder; and such sample ballots shall be posted prominently outside the enclosed space within the polling place.

(3) A seal for sealing the vote recorder after the polls are closed and such other materials and supplies as may be necessary or as may be required by law or by rules and regulations of the State Election Commission.

HISTORY: 1962 Code § 23-400.110; 1970 (56) 2022.

§ 7-13-1410. Duties of officials after closing of polls; review of ballots; duplicate ballots.

Immediately following the closing of the polls, the manager shall:

(a) Count the number of electors who voted, as shown in the poll list.

(b) Count the unused ballots without removing stubs.

(c) Count the soiled and defaced ballots.

(d) Insert the totals of (a), (b) and (c) of this section on the report forms provided therefor.

(e) Count and secure or inactivate all marking devices in the polling place so that no device may be used or operated by any unauthorized person in the polling place.

(f) Remove the voted ballots from the containers and sort them according to types or parts of ballots if more than one type or part has been used. If the number of voted ballots exceeds the number of voters whose names appear upon the poll list, the managers shall enter on the poll list an explanation of such discrepancy. Any manager having a different explanation shall enter it on the poll list and subscribe to it.

Before leaving the precinct, each ballot shall be reviewed and, if there appear markings other than by the marking device or there are names of candidates in spaces authorized for write-in votes, such write-in votes shall be tabulated by the precinct officials and the results certified to the counting station. In such instance, the precinct officials shall first determine, for the contest in which a write-in vote has been cast, that the voter on such ballot has not, for such contest, voted contrary to the voting instructions for such contest. If it is determined that the voter has not violated such instructions, write-in votes shall be tabulated and the ballot shall be reinserted with the remainder of the ballots. If it is determined that the voter has violated the instruction for marking the ballot, then the entire ballot shall be tabulated by the precinct officials and the results certified to the counting station, or the county election commission may cause a duplicate to be made of that part of the ballot marked according to such instructions.

Provided, that if it appears that a ballot is so torn, bent, or otherwise defaced or has been marked by other than the marking device, so that it cannot be counted by the automatic tabulating equipment, the county election commission may cause a duplicate of each such ballot to be marked so that it can be so counted.

Such duplicate ballots, when so authorized by the commission, shall be prepared at the counting station in the presence of witnesses and substituted for the original ballots, which duplicate ballots shall be counted by the automatic tabulating equipment. The original ballots shall be preserved and all such duplicate ballots shall be clearly labeled with the word "duplicate" and shall bear a serial number which shall also be recorded on the original. At the counting station, write-in votes tabulated by the precinct

officials shall be added to the results from ballots tabulated with the automatic tabulating equipment and the totals certified as the precinct count on the summary sheet.

(g) Put the unused ballots with the stubs attached, and soiled and defaced ballots with the stubs attached, in the envelopes or containers provided and certify the number. The voted ballots shall be placed in designated containers provided by the county election commission for use with automatic tabulating equipment, sealed, and the containers shall be sealed. Officials duly authorized by the county election commission shall then transport all of the ballots, precinct election supplies and records to the location designated by the commission for the processing or counting, or both, of such ballots.

HISTORY: 1962 Code § 23-400.111; 1970 (56) 2022.

§ 7-13-1420. Observation by poll watchers after polls close.

Poll watchers shall be allowed to remain in the polling place after the polls close and may observe the processing of the ballots and the sealing of the containers.

HISTORY: 1962 Code § 23-400.112; 1970 (56) 2022.

§ 7-13-1430. Counting stations; processing and counting of ballots and preparation of summary sheets.

In counties where marking devices and automatic tabulating equipment have been adopted, the county election commission shall establish one or more counting stations to receive voted ballots and other precinct election supplies after the polling precincts are closed. Such stations shall be under the supervision and direction of the commission. Processing and counting of voted ballots and the preparation of summary sheets shall be done in the presence of witnesses approved by the commission.

HISTORY: 1962 Code § 23-400.113; 1970 (56) 2022.

Attorney General's Opinions

It would be improper to have an election in one county and transport the data processing cards to another county to be counted by a computer. Op. Atty. Gen. to Mr. James A. Bell, Nov. 10, 1981.

§ 7-13-1440. Witnesses are to observe at counting station.

Witnesses shall not be allowed in the polling place but shall file their certificates of appointment at the proper counting station after the polls close and may observe all functions there.

HISTORY: 1962 Code § 23-400.114; 1970 (56) 2022.

§ 7-13-1450. Public display of vote recorders preceding election.

During the thirty days next preceding a general election or during the ten days next preceding a special election, the county election officials shall place on public exhibition, in such public places and at such times as they may deem most suitable for the information and instruction of the electors, one or more vote recorders containing the ballot labels and showing the offices and questions to be voted upon, the names and arrangements of parties and bodies and, so far as practicable, the names and arrangements of the candidates to be voted for. Such recorder or recorders shall be under the charge and care of a person competent as custodian and instructor.

HISTORY: 1962 Code § 23-400.115; 1970 (56) 2022.

§ 7-13-1460. Use of paper ballots where use of vote recorders is not possible or practicable.

If a method of election for any candidate or office or of voting on any question is prescribed by law in which the use of vote recorders is not possible or practicable, or in case at any election the number of candidates seeking nomination or nominated for any office renders the use of vote recorders for such office at such election impracticable, or if for any other reason at any election the use of vote recorders wholly or in part is not practicable, the county election officials may arrange to have the voting for such candidates or offices or for such questions conducted by paper ballots. In such cases, paper ballots shall be printed for such candidates, offices or questions, and the election conducted by the poll managers herein provided for, and the ballots counted and return thereof made in the manner required by law for such nominations, offices or questions, insofar as paper ballots are used.

HISTORY: 1962 Code § 23-400.116; 1970 (56) 2022.

§ 7-13-1470. Procedure where vote recorder becomes out of order.

If any vote recorder being used in any election shall become out of order during such election, it shall be repaired, if possible, or another vote recorder substituted by the custodian or county election officials as promptly as possible, for which purpose the governing body of the county may purchase as many extra vote recorders as it may deem necessary, but in case such repair or substitution cannot be made, paper ballots, printed or written and of any suitable form, may be used for the taking of votes.

HISTORY: 1962 Code § 23-400.117; 1970 (56) 2022.

§ 7-13-1480. Custody, storage, and care of vote recorders.

The county election officials shall designate a person who shall have the custody of the vote recorders of the county when they are not in use at an election and shall provide for his compensation and for the safe storage and care of the vote recorders. All vote recorders when not in use shall be properly covered and stored in a suitable place or places.

HISTORY: 1962 Code § 23-400.118; 1970 (56) 2022.

§ 7-13-1490. Regulations, instructions and forms.

The State Election Commission shall adopt and promulgate such regulations and instructions and design such forms as it may deem necessary to carry out the purposes of this article. A sufficient number of such regulations, instructions and forms shall be distributed to each county election commission using the voting and counting equipment authorized by the provisions of this article.

HISTORY: 1962 Code § 23-400.119; 1970 (56) 2022.

§ 7-13-1500. Oath of person preparing or operating tabulating devices.

Any person who prepares or operates the tabulating devices in any election or preparatory thereto shall take an oath as a custodian and file in accordance with law.

HISTORY: 1962 Code § 23-400.120; 1970 (56) 2022.

ARTICLE 15

VOTING MACHINES

Sec.

7-13-1610. State Board of Voting Machine Commissioners.

7-13-1620. Examination and approval of machines by Board.

7-13-1630. Employment of experts to assist in examination.

7-13-1640. Voting machine requirements.

7-13-1650. Experimental use of voting machines.

7-13-1660. Acquisition and use of approved voting machines by governing bodies.

7-13-1670. Demonstrations with machines for instruction of voters.

7-13-1680. Number of voting machines; type and use; repair; custody.

7-13-1690. Employment and qualifications of custodians of voting machines.

7-13-1700. Instruction of managers and clerks in use of machines; appointment of manager or clerk in emergency.

7-13-1710. Voting machine ballots; arrangement of nominations.

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- 7-13-1760. Commissioners of election shall see that machines and other equipment are in place and good order.
- 7-13-1770. Duties of managers prior to opening polls.
- 7-13-1780. Placement of voting machines in polling places.
- 7-13-1790. Lights and screens.
- 7-13-1800. Inspection of machines; covering of counter compartment shall be kept locked; attendance at voting places.
- 7-13-1810. Instructions of voters by model machine at polling place.
- 7-13-1820. Persons within guard rail; time permitted voters to vote.
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- 7-13-1850. Write-in ballots.
- 7-13-1860. Duty to protect machines against injury.
- 7-13-1870. Procedure when voting machine becomes inoperative.
- 7-13-1880. Canvass and return of vote.
- 7-13-1890. Machines shall remain locked after elections; keys.
- 7-13-1900. Use of voting machines for primary elections.
- 7-13-1910. Possession of voting machine key by unauthorized person.
- 7-13-1920. Tampering with voting machine.
- 7-13-1930. Other provisions of this Title applicable to use of voting machines.

§ 7-13-1610. State Board of Voting Machine Commissioners.

The Board of State Canvassers shall, ex officio, constitute the State Board of Voting Machine Commissioners.

HISTORY: 1962 Code § 23-401; 1952 Code § 23-401; 1950 (46) 2059.

Cross references—

As to the procurement and use of vote recorders, see §§ 7-13-1310 et seq.

§ 7-13-1620. Examination and approval of machines by Board.

Any person owning or being interested in any voting machine may request the State Board of Voting Machine Commissioners to examine such machine and determine the capacity of the machine accurately to register and count votes and in respect to mechanical perfections and imperfections and whether such machine meets the requirements prescribed in this article, and the Board shall thereupon comply with such request. The report of the Board shall be filed in its office and shall state whether in its opinion the kind of machine so examined can be safely and conveniently used at elections as herein provided. If the report states that the machine can be so used and meets the requirements herein prescribed, it shall be deemed approved by the Board, and machines of its kind may be adopted for use at elections as herein provided. No form of voting machine not so approved shall be used at any election.

HISTORY: 1962 Code § 23-402; 1952 Code § 23-402; 1950 (46) 2059; 1971 (57)

§ 7-13-1630. Employment of experts to assist in examination.

The Board may employ such experts as it may deem necessary to assist in the examination of a machine at a cost not exceeding fifty dollars for each examination, such cost to be paid by the person applying for such examination.

HISTORY: 1962 Code § 23-403; 1952 Code § 23-403; 1950 (46) 2059.

§ 7-13-1640. Voting machine requirements.

Any kind or type of voting machine may be approved by the State Board of Voting Machine Commissioners which is so constructed as to fulfill the following requirements. It shall:

(1) Provide facilities for voting for all candidates of as many political parties or organizations as may make nominations of candidates at any election, for or against as many questions as may be submitted at any election and, at all general or special elections, permit the voter to vote for all of the candidates of one party or in part for the candidates of one or more parties;

(2) Permit the voter to vote for as many persons for any office as he is lawfully entitled to vote for, but no more;

(3) Prevent the voter from voting for the same person more than once for the same office;

(4) Permit the voter to vote for or against any question he may have the right to vote on, but no other;

(5) If used at a primary election, be so equipped that all rows except those of the voter's party can be locked out by the managers of election by means of an adjustment on the outside of the machine;

(6) Correctly register or record and accurately count all votes cast for any and all candidates and for or against all questions;

(7) Be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected;

(8) Be provided with a counter which shall show at all times during an election how many persons have voted;

(9) Be provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters; and

(10) Insure voting in absolute secrecy.

Any such kind or type of machine shall be provided with a device for each party and for each nomination by petition for voting for presidential and vice-presidential candidates in one operation and listing the candidates by name and by party or indicating the candidate is nominated by petition.

HISTORY: 1962 Code (23-404; 1952 Code § 23-404; 1950 (46) 2059; 1982 (62) 2470.

Research and Practice References—

26 Am Jur 2d, Elections § 253.
29 CJS, Elections § 156.

ATTORNEY GENERAL'S OPINIONS

Separate paper ballots for constitutional amendments.—It was the intent of the legislature that separate paper ballots should be used for constitutional amendments where it is impossible to place the amendments on the machine themselves due to space requirements. 1967-68 Ops. Att'y Gen., No 2503, p 183.

Constitutional amendments cannot be placed on a voting machine by

numbers. 1967-68 Ops. Att'y Gen., No 2503, p 183.

Under 1962 Code § 23-400.26 [1976 Code § 7-13-440], voting machines must be constructed to allow a voter to vote for all candidates of one party at any level of government. 1975-76 Op Att'y Gen., No 4464, p 326.

§ 7-13-1650. Experimental use of voting machines.

The governing body of any county, city or town may provide for the experimental use at an election in one or more districts or precincts of a machine which it might legally adopt without a formal adoption thereof, and its use at such election shall be as valid for all purposes as if it had been legally adopted.

HISTORY: 1962 Code § 23-405; 1952 Code § 23-405; 1950 (46) 2059.

Research and Practice References—

29 CJS, Elections §§ 153, 203.

§ 7-13-1660. Acquisition and use of approved voting machines by governing bodies.

The governing body of any county or of any city or town in this State may provide for use at elections any kind or type of voting machine that fulfills the requirements of this article and has been approved by the State Board of Voting Machine Commissioners, and the commissioners of election or other electoral board may use such voting machines at any and all general or special elections held in such county, city or town, or any part thereof, or in any one or more voting precincts therein, for voting, registering and counting votes cast at such elections. Any such governing body may purchase, lease or otherwise acquire such voting machines and provide for the payment therefor in such manner as such governing body may deem proper. Voting machines of different kinds may be adopted for use and used in different districts of the same city, town or county.

HISTORY: 1962 Code § 23-406; 1952 Code 23-406; 1950 (46) 2059.

Research and Practice References—

29 CJS, Elections § 203.

§ 7-13-1670. Demonstrations with machines for instruction of voters.

In any county, city or town in which voting machines are to be used, the commissioners of election or other electoral board may designate suitable and adequate times and places for the exhibition and demonstration of a voting machine containing sample ballots, showing the title of offices to be filled and, so far as practicable, the names of the candidates to be voted for at the next election for the purpose of giving instruction as to the use of a voting machine to all voters who may apply for it. No voting machine shall be used for such instruction after being prepared and sealed for use in an election. During such exhibition the counting mechanism of the voting machine shall be concealed from view.

HISTORY: 1962 Code § 23-407; 1952 Code § 23-407; 1950 (46) 2059.

§ 7-13-1680. Number of voting machines; type and use; repair; custody.

The governing body of any county or municipality providing voting machines at polling places for use at elections shall provide for each such polling place at least one voting machine for each three hundred and fifty registered voters or portion thereof or as near thereto as may be practicable. Such machine shall be of the type approved as herein provided for and shall be kept in complete and accurate working order and in proper repair. The machine may be used in such election districts or precincts in the county or municipality as the officials holding the election or conducting the primary may determine. The governing body of the county or municipality owning the machines shall have custody of such machines and other furniture or equipment of the polling places when not in use at an election.

HISTORY: 1962 Code § 23-408; 1952 Code § 23-408; 1950 (46) 2059; 1968 (55) 2316.

Research and Practice References—
29 CJS, Elections §§ 155, 203.

ATTORNEY GENERAL'S OPINIONS

Section requiring one voting machine for each 350 registered voters applies to voting precincts and not the general area in which the election is held. 1967-68 Ops. Att'y Gen., No 2490, p 162.

Number of voting machines discretionary.—A governing body of a

county has discretion in determining the number of voting machines to be placed at a polling place. 1967-68 Ops. Att'y Gen., No 2503, p 183.

Failure to follow strictly the assignment of voting machines does not invalidate an election. 1967-68 Ops. Att'y Gen., No 2453, p 114.

§ 7-13-1690. Employment and qualifications of custodians of voting machines.

For the purpose of placing ballots in the frames of a machine, putting it in order and setting, testing, adjusting and delivering the machine, the commissioners of election or other electoral board may employ one or more competent persons, to be known as the custodians of voting machines, who shall be fully competent, thoroughly instructed and sworn to perform their duties honestly and faithfully. For such purpose such persons shall be appointed and instructed at least thirty days before the election and shall be considered as election officers.

HISTORY: 1962 Code § 23-409; 1952 Code § 23-409; 1950 (46) 2059.

§ 7-13-1700. Instruction of managers and clerks in use of machines; appointment of manager or clerk in emergency.

Not less than ten nor more than twenty-one days before each election, the commissioners of election or other electoral board shall instruct or cause to be instructed in the use of the machine and their duties in connection therewith the managers and clerks, if clerks be appointed, appointed to serve in such election, and they shall not permit any person to serve as a manager or clerk, if there be clerks, who is not fully qualified properly to conduct an election with the machine. But nothing herein shall be construed to prevent the appointment of a person as a manager or clerk, if there be clerks, of election to fill a vacancy in any emergency.

HISTORY: 1962 Code § 23-410; 1952 Code § 23-410; 1950 (46) 2059.

§ 7-13-1710. Voting machine ballots; arrangement of nominations.

In every county, city or town providing voting machines, the commissioners of election shall furnish to the managers of election a sufficient number of ballots printed on clear white paper, of such form and size as will fit the ballot frames of the machines, the arrangement of the names of the candidates on such ballots to be prescribed by the commissioners of election. Party nominations shall be arranged on each voting machine either in columns or horizontal rows, as shall nominations by petition, and the captions of the various ballots on such machines shall be so placed as to indicate to the voter what push knob, key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice.

HISTORY: 1962 Code § 23-411; 1952 Code § 23-411; 1950 (46) 2059.

Research and Practice References—
29 CJS, Elections §§ 156, 158, 159.

§ 7-13-1720. Unopposed candidates in primaries.

In any party primary in which voting machines shall be used in one or more voting precincts, the name of any unopposed candidate for nomination for any office shall be omitted from the ballot used in any such voting machine, and such unopposed candidate shall be declared to have received the total number of votes cast in such voting precinct.

HISTORY: 1962 Code § 23-412; 1952 Code § 23-412; 1950 (46) 2059.

§ 7-13-1730. Use of separate ballots on constitutional amendments and other public measures.

Nothing in this article shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures.

HISTORY: 1962 Code § 23-413; 1952 Code § 23-413; 1950 (46) 2059.

ATTORNEY GENERAL'S OPINIONS

Separate paper ballots for constitutional amendments.—It was the intent of the legislature that separate paper ballots should be used for constitutional amendments where it is impossible to place the amendments on the machine themselves due to space requirements. 1967-68 Ops. Att'y Gen., No 2503, p 183.

Constitutional amendments cannot be placed on a voting machine by

numbers. 1967-68 Ops. Att'y Gen., No 2503, p 183.

Although there is nothing in Article 13 on the use of voting machines that shall be construed as prohibiting the use of a separate "ballot" for constitutional amendments and other questions, where possible, the better practice may be to place separate questions on separate ballots. Op. Atty. Gen. to Ms. Deborah C. Westbrook, Aug. 27, 1982.

§ 7-13-1740. Sample or instruction ballots.

The commissioners of election or other electoral board of any county, city or town in which voting machines are used shall provide for each voting precinct in which such machines are used two sample ballots or instruction ballots, which shall be arranged in the form of a diagram of the entire front of the voting machine as it will appear after the official ballots are arranged therein or thereon for voting on election day. Such sample ballots shall be open to public inspection at such polling place during the day of election.

HISTORY: 1962 Code § 23-414; 1952 Code § 23-414; 1950 (46) 2059.

§ 7-13-1750. Preparation of machines for elections; party representatives may examine machines.

Before preparing a voting machine for any election at which candidates for more than one political party or candidates nominated by petition are to be voted for, written notice shall be mailed to the chairman of the local committee of each of the two

political parties which at the general election next preceding cast the highest and next highest number of votes, stating the time and place where the machines will be prepared. At such time one representative of each such political party shall be afforded an opportunity to see that the machines are in proper condition for use at the election. When a machine has been so examined by such representatives, it shall be sealed with a numbered metal seal in their presence. Such representatives shall certify as to the numbers of the machines, that all counters are set at zero (000) and as to the number registered on the protective counter and the number on the seal. When a voting machine has been properly prepared for an election, it shall be locked against voting and sealed and the keys thereof shall be retained in the custody of the commissioners of election or other electoral board and delivered to the managers of election as herein provided.

HISTORY: 1962 Code § 23-415; 1952 Code § 23-415; 1950 (46) 2059.

§ 7-13-1760. Commissioners of election shall see that machines and other equipment are in place and good order.

The commissioners of election or other electoral board, as the case may be, shall have the voting machines and all necessary furniture and equipment at the polling places before the time fixed for the opening of the polls, have the counters on the machines set at zero (000) and otherwise have the machines in good and proper order for use at such election.

HISTORY: 1962 Code § 23-416; 1952 Code § 23-416; 1950 (46) 2059.

§ 7-13-1770. Duties of managers prior to opening polls.

The managers of each election precinct at which a voting machine is to be used shall meet at the voting place at least three quarters of an hour before the time set for the opening of the polls at each election and shall proceed to arrange within the guard rail the furniture, stationery and voting machine or machines for the conduct of the election. The managers of election shall then have the voting machines, ballots and stationery required to be delivered to them for such election. The managers shall thereupon post at least two instruction cards conspicuously within the polling place. If not previously done, they shall arrange, in their proper place on or in the voting machine, the ballots prepared for such election. The keys to the voting machine shall be delivered to the managers of election at least thirty minutes before the time set for the opening of the polls, in a sealed envelope, on which shall be written or printed the number of the voting machine, the number of the seal and the number registered on the protective counter device. The envelope containing the keys shall not be opened until all of the managers of election for the precinct shall be present at the polling place and shall have examined the envelope to see that it has not been opened. The

machine shall remain locked against the voting until the polls are formally opened and shall not be operated except by voters in voting. Before opening the polls each manager shall examine the machines and see that no vote has been cast and that the counters register zero (000). If any counter is found not to register zero (000), the managers shall adjust the counters at zero (000) if it can be done by them; if not, they shall make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post such statement upon the wall of the polling room where it shall remain during the day of election, and in making the statement of canvass, they shall subtract such number from the number of registered ballots thereon.

HISTORY: 1962 Code § 23-417; 1952 Code § 23-417; 1950 (46) 2059.

§ 7-13-1780. Placement of voting machines in polling places.

At all elections at which voting machines are used the exterior of the voting machine and every part of the polling place shall be in plain view of the managers and clerks, if there be clerks of election. The voting machine shall be placed at least three feet from every wall or partition of the polling place and at least five feet from any table at which any of the election managers or clerks, if there be clerks, may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the managers of the election when not in use by voters. The managers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to see or ascertain how a voter votes or how he has voted.

HISTORY: 1962 Code § 23-418; 1952 Code § 23-418; 1950 (46) 2059.

§ 7-13-1790. Lights and screens.

Every voting machine shall be furnished with a lantern or other proper light, if necessary, to enable the voters while voting to read the ballots. All voting machines used in any election shall be provided with screen, hood or booth which shall conceal the voter and his action while voting.

HISTORY: 1962 Code § 23-419; 1952 Code § 23-419; 1950 (46) 2059.

§ 7-13-1800. Inspection of machines; covering of counter compartment shall be kept locked; attendance at voting places.

One of the managers of election may inspect the face of the machine after each voter has cast his vote, to see that the ballots

on the face of the machine are in their proper places and that the machine has not been injured. During an election the door or other covering of the counter compartment of the machine shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the managers of election and attached to the returns of election. No person shall be permitted in or about the voting place except as otherwise provided by law in elections in which paper ballots and ballot boxes are used.

HISTORY: 1962 Code § 23-420; 1952 Code § 23-420; 1950 (46) 2059.

§ 7-13-1810. Instructions of voters by model machine at polling place.

For the instruction of voters on any election day, there shall be provided for each polling place a mechanically operated model of a portion of the face of the machine. Such model shall be located on the table of one of the managers or in some other place accessible to the voters. Each voter so desiring shall, before entering the machine, be instructed regarding its operation and such instruction illustrated on the model and the voter given an opportunity personally to operate the model. The voter's attention may also be called to the diagram of the face of the machine so that the voter may become familiar with the location of the questions and the names of the offices and candidates.

HISTORY: 1962 Code § 23-421; 1952 Code § 23-421; 1950 (46) 2059.

§ 7-13-1820. Persons within guard rail; time permitted voters to vote.

After the opening of the polls, the managers of election shall not permit any voter or other person to pass within the guard rail until they ascertain that he or she is entitled to vote, in the manner required by § 7-13-710, as the case may be, and only one voter at a time for each voting machine at the voting place shall be permitted to pass within or be within the guard rail to vote. No voter shall remain within the voting machine booth longer than three minutes, and if he shall refuse to leave it after the lapse of three minutes, he may be removed by the managers.

HISTORY: 1962 Code § 23-422; 1952 Code § 23-422; 1950 (46) 2059.

§ 7-13-1830. Instruction after voter has entered machine.

In case any voter, after entering the voting machine, shall ask for further instructions concerning the manner of voting, two of the managers shall give such instructions to him, but no manager or other election officer shall in any manner request or seek to persuade or induce any such voter to vote any particular ticket or

for or against any particular candidate or for or against any particular amendment, question or proposition. After giving such instructions the managers shall, before the voter has voted, retire and such voter shall cast his ballot in secret.

HISTORY: 1962 Code § 23-423; 1952 Code § 23-423; 1950 (46) 2059.

CASE NOTES

Quoted in *Berry v Spigner*, 226 SC 183, 84 SE2d 381 (1954).

§ 7-13-1840. Assistance may be given to voters.

The provisions of this Title relating to the assistance to be given to voters shall also apply where voting machines are used.

HISTORY: 1962 Code § 23-424; 1952 Code § 23-424; 1950 (46) 2059.

§ 7-13-1850. Write-in ballots.

Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office are herein referred to as "*write-in ballots*." All write-in ballots voted shall be deposited, written or affixed in a single receptacle or device, and the elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. A write-in ballot must be cast in its appropriate place on the machine or it shall be void and not counted.

HISTORY: 1962 Code § 23-425; 1952 Code § 23-425; 1950 (46) 2059.

Research and Practice References—
29 CJS, Elections § 180.

ATTORNEY GENERAL'S OPINIONS

Voter may write in name of candidate whose name is printed on machine.—A voter desiring to vote by write-in on a voting machine may cast a ballot for a candidate whose name is printed on the machine by writing in the name of such candidate. 1963-64 Ops. Att'y Gen., No 1725, p 206.

§ 7-13-1860. Duty to protect machines against injury.

After the voting machines have been delivered to the polling places, it shall be the duty of the commissioners of election or other electoral board to provide ample protection against molestation or injury to the machines.

HISTORY: 1962 Code § 23-426; 1952 Code § 23-426; 1950 (46) 2059.

§ 7-13-1870. Procedure when voting machine becomes inoperative.

In case any voting machine used in any election district shall, during the time the polls are open, become injured so as to render it inoperative in whole or in part, the managers shall give immediate notice thereof to the commissioners of election or other electoral board, and such commissioners or other electoral board shall, if possible, substitute a machine in good order for the injured machine, and at the close of the polls the record of both machines shall be taken and the votes shown on their counters shall be added together in ascertaining the results of the election. If no other machine is available for use at such election and the injured one cannot be repaired in time to continue use thereof at such election, unofficial ballots made as nearly as possible in the form of the official ballots may be used, received by the managers of election, placed in a receptacle in such case to be provided by the election officials and counted with the votes registered on the voting machine, and the result shall be declared as though there had been no accident to the voting machine. The ballots thus voted shall be preserved and returned with the statement of canvass with a certificate setting forth how and why they were voted.

HISTORY: 1962 Code § 23-427; 1952 Code § 23-427; 1950 (46) 2059.

§ 7-13-1880. Canvass and return of vote.

As soon as the polls of election are closed the managers shall immediately lock and seal the voting machine against further voting and open the counter compartment in the presence of all persons who may be lawfully present at the time giving full view to the counters, and they shall canvass and announce the results as shown by the counters, including the votes recorded for each office on the independent ballots, and shall also announce the vote upon every amendment, proposition or question voted upon. The vote as registered shall be entered on a statement of canvass and when so completed shall be compared with the numbers on the counters of the machine. If found to be correct the statements shall be duly certified and sworn to and returned and filed as provided in this Title for returning and filing election returns. No tally sheets or return blank, as required by law for use in voting precincts in which paper ballots are used, need be furnished or used when voting machines are used, and no ballots need to be returned with the statement of canvass except the write-in ballots.

HISTORY: 1962 Code § 23-428; 1952 Code § 23-428; 1950 (46) 2059.

Research and Practice References—

29 CJS, Elections § 290.

§ 7-13-1890. Machines shall remain locked after elections; keys.

The keys of the voting machine shall be enclosed in a sealed envelope having endorsed thereon a certificate of the managers of election stating the number of the machine, the voting precinct, the number on the seal and the number on the protective counter and shall be returned and delivered by one of the managers of the election to the commissioners or other electoral board from whom the keys were received. After being locked by the managers of election the voting machines shall remain locked for the period of thirty days or as much longer as may be necessary or advisable because of any threatened contest over the result of the election, except as may be necessary to prepare the machines for another election and except that they may be opened and all data examined upon the order of a court of competent jurisdiction.

HISTORY: 1962 Code § 23-429; 1952 Code § 23-429; 1950 (46) 2059.

§ 7-13-1900. Use of voting machines for primary elections.

If in any county, city or town voting machines shall have been provided under the provisions of this article for use at general and special elections, such machines shall be used at primary elections in such county, city or town. When so used all provisions of this article applying to their use at general or special elections shall apply, so far as applicable, to the use of such voting machines at such primary elections.

HISTORY: 1962 Code § 23-430; 1952 Code § 23-430; 1950 (46) 2059.

Research and Practice References—
29 CJS, Elections § 118(1).

§ 7-13-1910. Possession of voting machine key by unauthorized person.

Any unauthorized person found in possession of any voting machine key shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than five hundred dollars and imprisoned in jail not less than ten nor more than ninety days, or both so fined and imprisoned, in the discretion of the court.

HISTORY: 1962 Code § 23-432; 1952 Code § 23-432; 1950 (46) 2059.

§ 7-13-1920. Tampering with voting machine.

Any person who wilfully tampers with or attempts to tamper with, disarrange, deface or impair, in any manner whatsoever, or destroy any such voting machine while it is in use at any election

or who shall, after such machine is locked in order to preserve the registration or record of any election made by it, tamper with or attempt to tamper with such machine or who instigates, aids or abets any other person in any case herein mentioned, with intent to destroy or change the record of votes on a voting machine, shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned for not less than three months nor more than three years.

HISTORY: 1962 Code § 23-433; 1952 Code § 23-433; 1950 (46) 2059; 1960 (51) 1602.

§ 7-13-1930. Other provisions of this Title applicable to use of voting machines.

All of the provisions of this Title not inconsistent with the provisions of this article shall apply with full force and effect to elections in counties, cities and towns adopting and using voting machines.

HISTORY: 1962 Code § 23-431; 1952 Code § 23-431; 1950 (46) 2059.

ARTICLE 17

EXPLANATION OF PROPOSED CONSTITUTIONAL AMENDMENTS

Sec.

7-13-2110. Authorization of simplified or more detailed explanation of proposed constitutional amendments.

7-13-2120. Constitutional Ballot Commission.

7-13-2130. Jurisdiction of proceedings challenging explanations.

§ 7-13-2110. Authorization of simplified or more detailed explanation of proposed constitutional amendments.

In addition to all other requirements of law and the Constitution of this State, when any proposed amendment to the Constitution is submitted to the electorate for approval or disapproval in the general election and the proposed amendment is of such nature that it might not be clearly understood by the voters, a simplified or, when appropriate, more detailed explanation of the meaning and effect of such amendment shall be placed upon the ballot along with the proposed amendment question. When mechanical devices for voting are used, printed copies of such explanation shall be made available at each voting precinct. The provisions of this section shall apply only to statewide amendments.

HISTORY: 1975 (59) 246.

Cross references—

As to amendments and revision of the South Carolina Constitution, see SC Const. Art 16.

§ 7-13-2120. Constitutional Ballot Commission.

To establish an agency to determine whether or not a proposed constitutional amendment requires a simplified or more detailed explanation as provided for in § 7-13-2110, there is hereby created the Constitutional Ballot Commission composed of the Attorney General, the Director of the State Election Commission and the Director of the Legislative Council. Prior to the printing of ballots in each general election year in which proposed constitutional amendments are voted upon, the Commission shall meet at the call of the Attorney General and:

(1) Consider each proposed amendment and make a determination as to whether or not a simplified or more detailed explanation is necessary or appropriate; and

(2) In those cases where it is determined that an explanation is deemed necessary or appropriate, phrase such explanation and submit it to the State Election Commission under the signatures of at least a majority of the ballot commissioners. The Election Commission shall arrange for the placement of amendment explanations on ballots and make them available to the news media, upon request, at least ten days prior to the general election.

HISTORY: 1975 (59) 246.

§ 7-13-2130. Jurisdiction of proceedings challenging explanations.

The State Supreme Court shall have exclusive and original jurisdiction in any proceeding challenging the amendment explanations prepared by the Ballot Commission.

HISTORY: 1975 (59) 246.

CASE NOTES

The Supreme Court had original jurisdiction over an election dispute, even though the language of the complaint related to the form of the ballot as it appeared in the proposing resolution, where it was clear that the

court's determination would depend not merely upon the language of the question employed by the General Assembly, but also upon the "simplified explanation" as well. *Taylor v Roche* (1978, SC) 248 SE2d 580.

CHAPTER 15
Absentee Registration and Voting

ARTICLE 1

GENERAL PROVISIONS

§ 7-15-10. Duties of State Election Commission.

The State Election Commission shall be responsible for carrying out the provisions of Article 3 and Article 5 of this chapter. It shall have printed and distributed all forms that are required to effectuate these purposes:

- (1) To make it possible for all persons mentioned in § 7-15-110 to register; and
- (2) To make it possible for all such registrants to vote in general and special elections only.

HISTORY: 1962 Code § 23-450.3; 1975 (59) 263; 1976 (59) 1465; 1982 (62) 1964

Editor's Note—

Although 1962 Code §23-450.3 [appearing as 1976 Code §7-15-10] was repealed by Section 2 of 1976 Act No. 479, identical provisions were re-anacted by Section 2 of the 1976 Act as 1962 Code §23-449.13, and the original 1976 Code section numbers have been retained.

Effect of Amendments—

The 1982 amendment added the words "promulgate regulations" and "drafted" in the first paragraph, and rewrote item (2)

Cross references—

As to the creation of the State Election Commission, see (7-3-10. §7-15-20. Construction.

Article 3 and Article 5 of this chapter shall be liberally construed in order to effectuate their purposes.

§ 7-15-20. Construction.

Article 3 and Article 5 of this chapter shall be liberally construed in order to effectuate their purposes.

HISTORY: 1962 Code §23-450.4; 1975 (59) 263; 1976 (59) 1465; 1982 (62) 1964

ARTICLE 3

ABSENTEE REGISTRATION

SEC.

- 7-15-110. Persons qualified to register to vote by absentee method.
- 7-15-120. Registration forms.
- 7-15-130. Method of obtaining registration form.
- 7-15-140. Completion and return of registration form.

- 7-15-150. Entry into registration book.
- 7-15-160. Validity and effect of registration.
- 7-15-170. Preservation and destruction of record books and registration forms.
- 7-15-175. Registration of persons after closing of books.
- 7-15-180. Verification of registration upon request for absentee ballot.
- 7-15-190. Transmission of list of persons registered to vote and requesting absentee ballots.
- 7-15-200. Mailing to applicant of absentee ballot, instructions, etc.
- 7-15-210. Return-addressed envelopes for return of absentee ballot.
- 7-15-220. Oath to be signed by absentee voter and witnessed; form of oath.
- 7-15-230. Marking of ballot; return of ballot and oath; when ballots not to be counted.
- 7-15-240. Conduct of absentee voting in primary and special elections generally; cooperation of boards of registration and other State election officials with political parties or political subdivisions.
- 7-15-250. Duties of county committees conducting primary elections.
- 7-15-260. Duties of political parties conducting primary elections; expenses incurred in conducting elections to be borne by parties.

§ 7-15-110. Persons qualified to register to vote by absentee method.

The following persons shall be qualified to register to vote by the absentee method:

- (1) Member of the Armed Forces of the United States.
- (2) Member of the Merchant Marine of the United States.
- (3) A person serving with the American Red Cross or the United States Service Organizations attached to and serving with the Armed Forces of the United States outside of the county of his residence in South Carolina.
- (4) Member or employee of any department of the United States Government serving overseas.
- (5) Students.
- (6) A spouse and dependents residing with any of the above categories (1)-(5).
- (7) Physically disabled persons due to injury or illness.
- (8) Persons whose employment is out of state, their spouses and dependents residing with them.
- “(9) A citizen of the United States residing outside the United States:
 - (a) If he last resided in South Carolina immediately before his departure from the United States;
 - (b) If he could have met all qualifications to vote in federal elections in South Carolina even though while residing outside the United States he does not have a place of abode or other address in South Carolina; even if his intent to return to South Carolina may be uncertain, as long as he has complied with all applicable South Carolina qualifications and

requirements which are consistent with the Federal Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203).

Effect of Amendments—

The 1982 amendment made a number of changes to Chapter 15 of Title 7 with reference to absentee registration and voting, but this section was not affected.

Cross references—

As to barrier-free polling places for physically handicapped electors, see § 7-7-990.

HISTORY: 1962 Code § 23-445; 1975 (59) 263; 1982 (62) 1964; 1984 Act No. 266.

Cross references—

As to constitutional provisions regarding registration of voters, generally, see SC Const, Art 2, § 8.

§7-15-120. Registration forms.

Persons listed in items (1), (2), (3), or (4) of Section 7-15-110, their spouses, and dependents residing with them, and item (9) of such section may register by using either federal Standard Form 76, or any subsequent form replacing it issued by the federal government, or the state absentee registration form. In order to be registered, either form must reach the county board of registration not later than thirty days before the election.

The State Election Commission shall have printed and shall furnish the board of registration of each county an adequate number of registration forms in the following form, substituting in each case the appropriate calendar year for which the cards are printed:

**ABSENTEE REGISTRATION FOR THE ELECTION
TO BE HELD**

_____ 19__
_____ County No.: _____

READ CAREFULLY THE INSTRUCTIONS PRINTED ON THE REVERSE SIDE HEREOF BEFORE FILLING IN THIS FORM:

I hereby swear (or affirm) that:

(1) My full name is: _____

(2) I am a citizen of the United States and of the State of South Carolina.

(3) The date of my birth was: _____

(4) I am not disqualified from voting because of a criminal offense or confined in any penal institution under the judgment of a court.

(5) I am (check appropriate blank)

(a) in the armed forces of the United States



- (b) in the Merchant Marine of the United States
- (c) serving with the American Red Cross or with the United Service Organization
- (d) a member (), employee () of the _____ department of the United States Government serving overseas.
- (e) a student () residing outside of the county of my residence and enrolled in an institution of learning.
- (f) a spouse (), dependent () residing with any of the above.
- (g) physically disabled due to illness or injury ().
- (h) A person whose employment is out of state.
- (i) A spouse (), dependent () residing with a person whose employment is out of state.
- (j) Sixty-five years of age or older ().
- 6) My home address in South Carolina is: _____
- (7) My mailing address (address to which absentee ballot should be sent) is: _____
- (8) My State House of Representatives District Number (if known) is: _____
- (9) My Social Security Number is: _____

Signature of Applicant

On the back of each card shall be printed the following:

INSTRUCTIONS. This registration form must be filled out and returned, in the envelope accompanying it, to your county board of registration. All entries except your signature should be printed or typewritten.

You are required to sign the form.

Conviction of a felony or offenses against the election laws disqualifies you from registering and voting, unless such disqualification shall have been removed by service of the sentence, including probation and parole time unless sooner pardoned.

Except for persons in category (5) (g) of this form, registration by this form, if granted by your county board of registration, is valid only for the elections to be held during this calendar year. For elections which are held in subsequent calendar years, you must be registered again. Persons applying under category (5) (g), 'physically disabled due to illness or injury,' may, upon presentation of a written statement of such disability by their doctor and persons who are sixty-five years of age or older, may use this form instead of the regular registration form to be registered permanently.

IN ORDER TO BE REGISTERED, THIS FORM MUST REACH YOUR COUNTY BOARD OF REGISTRATION NOT LATER

THAN THIRTY DAYS BEFORE THE ELECTION.

HISTORY: 1962 Code § 23-446; 1975 (59) 263; 1982 (62) 1964; 1984 Act No. 266.

Effects of Amendments—

The 1982 amendment substituted “felony conviction or offense against the election laws” for “criminal offense or confined in any penal institution under the judgement of a court” in item (4) concerning disqualifications from voting. the amendment also substituted a new 3rd paragraph under INSTRUCTIONS concerning disqualifications from voting.

§7-15-130. Method of obtaining registration forms

Any person specified in Section 7-15-110 or any relative or friend of such person, may at any time request from the board of registration of the county of the residence of such person a registration form, and in making such request, shall furnish the name and home address and absentee mailing address of such person.

Application for an election ballot on any form provided members of the Armed Forces, Merchant Marine, or overseas citizens by federal government must be considered as a request for a registration form, and the State Election Commission shall forward all forms received by it to the board of registration of the proper county. Upon receipt of a request, the Board of registration shall immediately mail a registration form, together with a return-address envelope, to the person specified in Section 7-15-110 at the absentee mailing address given. The board of registration shall number each registration form and keep a record book in which must be recorded the number of the form, the name, home address, and absentee mailing address of the person for whom the registration form is requested, the name, address, and relation, if any, of the person requesting the for, the date upon which the form is requested, and the date upon which the form is mailed. For good cause, the board may furnish a duplicate registration form, noting the fact in the record book.

HISTORY: 1962 Code § 23-447; 1975 (59) 263; 1982 (62) 1964; 1984 Act No. 266

§ 7-15-140. Completion and return of registration form.

The person to whom the registration form is mailed shall complete the form. The form shall then be mailed to the proper board of registration in the return-addressed envelope accompanying the registration form. Upon the return of the registration form to the board, the board shall stamp or write thereon the date of its receipt.

HISTORY: 1962 Code § 23-448; 1975 (59) 263.

§ 7-15-150. Entry into registration book.

Upon the return of the registration form, the board shall consider the information upon the form and any other information that it may have or obtain concerning the applicant and judge his legal qualifications for registration. If he is found to be entitled to registration, the board shall enter his name in the registration book for his voting precinct, noting after his name the words “Absentee Registration”, the number of the registration form and

the year for which the registration is valid. Such entry shall constitute the registration of the applicant.

HISTORY: 1962 Code § 23-449; 1975 (59) 263; 1982 (62) 1964.

§ 7-15-160. Validity and effect of registration.

Each registration under the provisions of this article shall be valid only for the calendar year in which it is granted and shall allow the registrant to vote during that year only in any general, special or primary election.

HISTORY: 1962 Code § 23-450; 1975 (59) 263; 1976 (59) 1465.

Editor's Note —

Section 2 of 1976 Act No. 479 [1976 (59) 1465] repealed § 23-450 of the 1962 Code and enacted § 23-449.1 in lieu thereof, effective March 2, 1976. The two provisions are identical and § 23-449.1 has been designated and codified as § 7-15-160 of the 1976 Code by the Code Commissioner.

§ 7-15-170 Preservation and destruction of record books and registration forms.

Each county board of registration shall preserve the record book required to be kept by § 7-15-130 and the registration forms of all applicants for registration until the end of the calendar year and until the time for contesting the elections shall have expired, at which time they shall be destroyed; but if any contest concerning the elections is then pending the record book and the forms shall not be destroyed until the final determination of the contest.

HISTORY: 1962 Code § 23-450.1; 1975 (59) 263; 1976 (59) 1465.

Editor's Note —

Section 2 of 1976 Act No. 479 [1976 (59) 1465] repealed § 23-450.1 of the 1962 Code and enacted § 23-449.2 in lieu thereof, effective March 2, 1976. The two provisions are identical and § 23-449.2 has been designated and codified as § 7-15-170 of the 1976 Code by the Code Commissioner.

§ 7-15-175. Registration of persons after closing of books.

Nothing in this article shall be construed as allowing registration under the provisions of this article after the registration books have been closed as required by §§ 7-5-150 and 7-5-220.

HISTORY: 1962 Code § 23-449.3; 1976 (59) 1465; 1982 (62) 1964.

Research and Practice References—

29 C.J.S., Elections §39.

Effect of Amendments—

The 1982 amendment made a number of changes to Chapter 15 of Title 7 with reference to absentee registration and voting, but this section was not affected.

§ 7-15-180. Verification of registration upon request for absentee ballot.

Upon the request for an absentee ballot by any person, qualified to receive an absentee ballot under the provisions of § 7-15-320, the registration board shall verify if such applicant is registered. If no record of such applicant's registration is found, such board shall immediately forward to such applicant a registration form as provided in § 7-15-120. In the case of any such person found to be so registered, the board of registration shall insure his receipt of a ballot as provided in Article 5 of this chapter for those receiving registration under provisions of this article.

HISTORY: 1962 Code § 23-449.4; 1976 Act No. 479 §2.

Editor's Note—

Although 1962 Code §23-450.2; [appearing as 1976 Code §7-15-1800] was repealed by Section 2 of 1976 Act No. 479, identical provisions were re-enacted by Section 2 of the 1976 Act as 1962 Code §23-449.4, and the original 1976 Code section numbers have been retained.

HISTORY: 1962 Code § 23-450.2; 1975 (59) 263; 1976 (59) 1465.

Editor's Note—

Section 2 of 1976 Act No. 479 [1976 (59) 1465] repealed § 23-450.2 of the 1962 Code and enacted § 23-449.4 in lieu thereof, effective March 2, 1976. The two provisions are identical and § 23-449.4 has been designated and codified as § 7-15-180 of the 1976 Code by the Code Commissioner.

ATTORNEY GENERAL'S OPINIONS

The proper authority to receive a request for an absentee ballot for a primary election would be the county registration board. However, in order to facilitate an individual's right to vote there would appear to be no reason why a request for an absentee ballot received by the political party instead of the registration board should not be honored as a valid request for a ballot. Op. Att'y Gen. to Hon. Zilla Hinton, May 23, 1980.

§ 7-15-190. Transmission of list of persons registered to vote and requesting absentee ballots.

Immediately upon the closing of the registration books thirty days before each election the board of registration of each county shall transmit to the commissioners of election of the county or to the county committee for each political party of the county which makes a request therefor, a list of the names of the persons who are registered for the particular election in the manner provided in § 7-15-150 and who have requested ballots under the provisions of § 7-15-180, together with their respective absentee mailing

addresses, their respective voting precincts and the number of the respective registration cards, where applicable.

HISTORY: 1976 (59) 1465.

Editor's Note —

This section is effective March 2, 1976.

Cross references —

As to notation on registration list of absentee voters, see § 7-15-430.

As to preparation and availability for public inspection of list of persons issued and who cast absentee ballots, see § 7-15-440.

§ 7-15-200. Mailing to applicant of absentee ballot, instructions, etc.

Upon receipt of the list of names the county committee, the commissioners of election or other persons responsible for the conduct of the election shall, as soon as the ballot to be used in the election are delivered to them, mail at his absentee address, in one envelope, the following items to each person qualified to receive an absentee ballot and who has requested an absentee ballot:

- (1) One of each ballot to be used in the election;
- (2) A copy of the oath set forth in § 7-15-220;
- (3) Printed instructions as to the marketing, folding and return of each ballot and as to the signing and return of the oath;
- (4) A return-addressed envelope for the return of the ballots and the oath to the commissioners of election;
- (5) Any additional oath, instructions or information necessary to enable such absentee ballot applicant to execute and return a ballot legally acceptable by the officials charged with conducting such election.

HISTORY: 1962 Code § 23-449.6; 1976 (59) 1465.

Editor's Note —

This section is effective March 2, 1976.

ATTORNEY GENERAL'S OPINIONS

The proper authority to receive a request for an absentee ballot for a primary election would be the county registration board. However, in order to facilitate an individual's right to vote there would appear to be no reason why a request for an

absentee ballot received by the political party instead of the registration board should not be honored as a valid request for a ballot. Op. Att'y Gen. to Hon. Zilla Hinton, May 23, 1980.

§ 7-15-210. Specifications for return-addressed envelopes.

The return-addressed envelope required by item (4) of § 7-15-200 to be sent to each absentee ballot applicant shall have printed

on its face in the upper left hand corner the words "Absentee ballots for _____ County, _____ (county seat), South Carolina." All blanks on the face of the envelope shall be filled in by the commissioners of election prior to the mailing of the ballot to the absentee ballot applicant. On the back shall appear blanks which the voter shall fill in with his name and address. The envelope shall be of such thickness as to make it impossible to read any of its contents without opening the envelope. When the ballot is for use in a primary election the return-addressed envelope referred to herein and in § 7-15-200 shall be changed appropriately to insure its return to the proper county committee.

HISTORY: 1976 (59) 1465.

§ 7-15-220. Signing and witnessing of oath of absentee ballot applicant.

The oath, a copy of which is required by item (2) of § 7-15-200 to be sent each absentee ballot applicant and which is required by § 7-15-230 to be returned with the absentee ballot applicant's ballot, shall be signed by the absentee ballot applicant and witnessed. The oath shall be in the following form:

I hereby swear (or affirm) that I am duly qualified to vote at this election according to the Constitution of the State of South Carolina, that I have not voted during this election, that the ballot or ballots with which this oath is enclosed is my ballot and that I have received no assistance in voting my ballot that I would not have been entitled to receive had I voted in person at my voting precinct.

Dated on this _____ day of _____ 19____

Signature of Voter

Signature of Witness

Address of Witness

HISTORY: 1976 (59) 1465.

Research and Practice References—

- 26 Am Jur 2d, Elections § 248.
- 29 CJS, Elections § 210.

§ 7-15-230. Marking and return of ballot; ballot shall not be counted unless oath signed and ballot returned prior to closing of polls.

Upon receipt of the ballot or ballots the absentee ballot applicant shall mark each ballot on which he wishes to vote, fold it so that its contents cannot be distinguished without unfolding it and mail it in compliance with the instructions received by him with the ballot. Enclosed with the ballot or ballots shall be the oath set forth in § 7-15-220.

No ballot shall be counted unless the oath is properly signed and enclosed therewith nor shall any ballot be counted which is received by the commissioners of election or other officials charged with the conduct of the election after time for closing of the polls, and the printed instructions required by item (3) of § 7-15-200 to be sent each absentee ballot applicant shall notify him that his vote will not be counted in either of these events:

HISTORY: 1976 (59) 1465.

Research and Practice References—

26 Am Jur 2d, Elections § 250.

29 CJS, Elections § 210.

CASE NOTES

No witness signature. — This section mandates the exclusion of absentee votes that are not signed by a witness. *Gregory v South Carolina Democratic Executive Committee* (1978, SC) 247 SE2d 439.

Although vote-buying in mixed state/federal election allegedly involved only office of county sheriff, jurisdiction lay under federal statute proscribing vote-buying as there was possibility of corruption of the two federal contests in the primary because many of the envelopes containing absentee ballots were unsealed when they were picked up from voters and turned into one defendant and there was testimony that such defendant and several workers helped voters mark their absentee ballots not only for sheriff's race but for others as well and some of the 400 absentee ballots received in the precinct apparently

were voted in the congressional election. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973 (c).

United States v. Carmichael, 685 F. 2d 903 (1982).

Activities of defendant, who induced each voter to apply for absentee ballot without regard to whether voter actually met requirements for absentee voting, who was present when each voter marked ballot and in some cases actually marked ballot himself, who also provided voters with varying quantum of advice, and who personally paid each voter and collected each absentee ballot, tainted federal election process even though intended to influence only local election, and thus fell squarely within prohibition of federal vote-buying statute. Voting Rights Act of 1965, §11(c), 42 U.S.C.A. §1973 (c).

United States v. Mason, 673 F. 2d 737 (1982).

§ 7-15-240. Conduct of absentee voting in primary and special elections generally; cooperation of boards of registration and other State election officials with political parties or political subdivisions.

Absentee balloting in primary and special elections shall be in accordance with regulations of the political party or political subdivision conducting any such election which are not in conflict with any provision of this Title. Boards of registration and all other election officials of this State shall cooperate with such authorities

to the end that the right to vote may be preserved for all persons as defined in §§ 7-15-310 and 7-15-320.

HISTORY: 1976 (59) 1465.

Editor's Note —

This section is effective March 2, 1976.

§ 7-15-250. Duties of county committees conducting primary elections.

In conducting primary elections, county committees shall perform the duties generally required in this article of commissioners of election.

HISTORY: 1976 (59) 1465.

Editor's Note —

This section is effective March 2, 1976.

ATTORNEY GENERAL'S OPINIONS

The proper authority to receive a request for an absentee ballot received by the political party instead of the primary election would be the county registration board should not be registration board. However, in order to be honored as a valid request for a ballot, facilitate an individual's right to vote Op. Att'y Gen. to Hon. Zilla Hinton, there would appear to be no reason why May 23, 1980.

§ 7-15-260. Duties of political parties conducting primary elections; expenses incurred in conducting elections to be borne by parties.

Any political party conducting a primary in this State is responsible for carrying out the provisions of this article by making ballots and election material available so that the persons named in § 7-15-320 may be enabled to vote in primary elections subject to the rules and regulations of such political party. All expenses incurred by any political party conducting elections subject to the provisions of this article shall be borne by such political party.

HISTORY: 1976 (59) 1465.

Research and Practice References —

25 Am. Jur. 2d, Elections § 163.

ALR and L Ed Annotations —

Construction and effect of absentee voter's law. 97 ALR 2d 257.

7-15-370. Furnishing ballots and envelopes; duties of county registration board.

7-15-375. Return envelope for absentee ballot.

7-15-380. Oath of absentee ballot applicant.

7-15-385. Marking ballot; return; records; storage.

7-15-390. Absentee balloting in primary and special elections; municipal elections.

7-15-395. Responsibilities of political parties; expenses.

§ 7-15-310. Definitions.

As used in this article:

(1) The term "members of the Armed Forces of the United States" means members of the United States Army, the United

States Navy, the United States Marine Corps, the United States Air Force, the United States Coast Guard, or any of their respective components;

(2) The term "members of the Merchant Marine of the United States" means all officers and men engaged in maritime service on board ships;

(3) The term "students" means all persons residing outside of the counties of their respective residences, enrolled in an institution of learning;

(4) The term "physically disabled person" shall mean a person who, because of injury or illness, cannot be present in person at his voting place on Election Day;

(5) The term "registration form" means the form described in § 7-15-120; and

(6) The term "persons in employment" means those persons who by virtue of their employment obligations are unable to vote in person.

(7) The term "authorized representative" means a registered elector who, with the voter's permission, acts on behalf of a voter unable to go to the polls because of illness or disability resulting in his confinement in a hospital, sanatorium, nursing home, or place of residence, or a voter unable because of a physical handicap to go to his polling place or because of such handicap unable to vote at his polling place due to existing architectural barriers which deny him physical access to the polling place, voting booth, or voting apparatus or machinery. Under no circumstance shall a candidate or a member of a candidate's paid campaign staff or volunteers reimbursed for the time they expend on campaign activity be considered an "authorized representative" of an elector desiring to vote by absentee ballot.

(8) The term "immediate family" means a person's spouse, parents, children, brothers, or sisters.

(9) The term 'overseas citizen' means a citizen of the United States residing outside of the United States as specified by Section 7-15-110.

HISTORY: 1962 Code § 23-441; (48) 423; 1966 (54) 2376; 1973 (58) 73; 1975 (59) 813; 1982 (62) 1964; 1984 Act No. 266.

Effect of Amendments—

The 1982 amendment added item (7) defining "authorized representative" and item (8) defining "immediate family".

CASE NOTES

Error on application.—The fact that an applicant for an absentee ballot checked the wrong reason for being absent was not a basis for directing that the voter be disenfranchised. *Gregory v South Carolina Democratic Executive Committee* 271 SC 364, 247 SE2d 439. (1978).

ATTORNEY GENERAL'S OPINIONS

Absentee balloting is permitted in school or municipal elections. 1973-74 Op. Atty Gen., No. 3702, p. 55.

If the board has some reason to question whether or not an authorized representative actually has been authorized to request absentee ballots, they would have the right to check behind the request with the person for whom the request is being made. Op Atty. Gen. to Betty S. Whitesides, Sept. 2, 1982.

§ 7-15-320. Persons qualified to vote by absentee ballot.

Any qualified elector in the following categories must be permitted to vote by absentee ballot in all elections when he is absent from his county of residence on election day during the hours the polls are open, to such extent that it prevents him from voting in person except that physically disabled persons, poll managers, county voter registration board members and staff, and county election commission members and staff working on election day, and persons whose employment obligations require that they be at their place of employment during the hours that the polls are open and present written certification of such obligation, signed by their employer, to the county registration board may vote by absentee ballot whether or not absent from their county of residence:

- (1) Students, their spouses, and dependents residing with them.
- (2) Members of the Armed Forces and the Merchant Marine of the United States, their spouses, and dependents residing with them.
- (3) Persons serving with the American Red Cross or with the United Service Organizations who are attached to and serving with the Armed Forces of the United States, their spouses, and dependents residing with them.
- (4) Persons in employment.
- (5) Physically disabled persons.
- (6) Governmental employees, their spouses, and dependents residing with them.
- (7) Electors with a death or funeral in the family within a three-day period prior to the election.
- (8) Persons on vacation (who by virtue of vacation plans will be absent from their county of residence on election day).
- (9) Poll managers, county voter registration board members and staff, and county election commission members and staff working on election day.
- (10) Overseas citizens."

HISTORY: 1962 code § 23-442; 1953 (48) 423; 1960 (51) 1598; 1966 (54) 2376; 1975 (59) 815; 1982 (62) 1964; 1984 Act No. 266.

Effect of Amendments—

The 1982 amendment added the phrase "during the hours the polls are open" in the first sentence of the introductory paragraph, and also added the phrase "poll managers, county voter registration board members and staff, and county election commission members and staff working on election day" after physically disabled persons in the same sentence. In item (4), "Persons in" was added. Former item (8)

concerning professions of ministry, teaching, and medical was deleted, former item (9) was renumbered (8), and a new item (9) was added.

Cross references—

As to barrier-free polling places for physically handicapped electors, see § 7-7-990.

As to responsibility for expenses in mak-

ing ballots and election material available so that persons named in ' 7-15-320 may be enabled to vote in primary elections, see '7-15-395.

As to the right of suffrage, see SC Const, Art 2.

Research and Practice References—

- 26 Am Jur 2d, Elections " 243, 244, 247.
- 29 CJS, Elections ' 210(3).
- Elections and Voting. 25 SC L Rev 417.

ALR and L Ed Annotations—

Construction and effect of absentee voters' laws. 97 ALR2d 257.

ATTORNEY GENERAL'S OPINIONS

Army reservists on active duty for training.—Members of the United States Army Reserve on active duty for the normal two weeks summer training period are considered members of the Armed Forces and are eligible to vote by absentee ballot during the two-week summer training period. 1965-66 Ops. Att'y Gen., No 2055, p 143.

A person may work out of state and vote by absentee method. Op. Atty. Gen. to Hon. Thomas F. Hartnett, July 20, 1977.

§ 7-15-330. Time of application for absentee ballot; application in person.

To vote by absentee ballot, any qualified elector or a member of his immediate family, must request an application to vote by absentee ballot in person, by telephone, or by mail from the county registration board for the county of the voter's residence. A person requesting an application for a qualified elector as such qualified elector's authorized representative must request an application to vote by absentee ballot in person or by mail only and must himself be a registered voter and must sign an oath to the effect that he fits the statutory definition of such a representative. This signed oath must be kept on file with the board of registration until the end of the calendar year or until all contests concerning a particular election have been finally determined, whichever is later. A candidate or a member of a candidate's paid campaign staff including volunteers reimbursed for time expended on campaign activity is not allowed to request applications for absentee voting for any person designated in this section unless such person is a member of the immediate family. A request for an application to vote by absentee ballot must be made not earlier than sixty days prior to the election in which the qualified elector desires to be permitted to vote by absentee ballot. Completed applications must be returned to the county registration board in person or by mail before 5:00 p.m. on the fourth day preceding the day of the

election: applications must be accepted by the county board of registration until 5:00 p.m. on the day immediately preceding the election for those who appear in person and are qualified to vote absentee pursuant to Section 7-15-320 (4) and (7). The board of registration shall serially number each absentee ballot application form and keep a record book in which must be recorded the number of the form, the name, home address, and absentee mailing address of the person from whom the absentee ballot application form is requested: the name, address, voter registration number, and relationship of the person requesting the form, if other than the applicant; the date upon which the form is requested; and the date upon which the form is issued. This information must become a public record at 9:00 a.m. on the day immediately preceding the election. Any person who violates the provisions of this section is subject to the penalties provided in Section 7-25-170.

HISTORY: 1962 Code§ 23-443; 1953 (48) 423; 1960 (51) 1598; 1971 (57) 85; 1975 (59) 815; 1982 (62) 1964; 1984 Act No. 266.

Research and Practice References—
26 Am Jur 2d, Elections § 250.

ATTORNEY GENERAL'S OPINIONS

When ballot may be received.— This section would authorize a person to receive a ballot if they apply in person before five o'clock p.m. on the day preceding the election. Op. Att'y Gen. to Hon. Zilla Hinton, May 23, 1980.

As the authorized representative may request an absentee ballot in person or by mail it would appear that he could also be sent a copy of the oath for him to return it by mail. Op. Atty. Gen. to Ms. Betty S. Whitesides, Sept. 2, 1982.

Absentee ballot applications are clearly intended to be distributed only from the office of the county board of registration and from no other location. Op. Atty. Gen. to Ms. Betty S. Whitesides, Sept. 2, 1982.

If a person attempting to vote by absentee ballot is not on the list of persons entitled to vote by absentee ballot, it would be grounds to challenge the ballot. Op. Atty. Gen. to Ms. Eloise P. Kirkland, May 28, 1976.

7-15-340

Form of application for absentee ballot.

The application required in Section 7-15-330 to be submitted to such election officials must be in the following form; except that persons listed in Section 7-15-320 (2),(3),(6), and (10) may use Standard Form 76, or any subsequent form replacing it, provided by the federal government as a simultaneous request for registration and an absentee ballot or a request for an absentee ballot if already registered.

APPLICATION FOR ABSENTEE BALLOT

TO THE BOARD OF VOTER

REGISTRATION: _____ COUNTY

I hereby apply for an absentee ballot and request that I be permitted to vote in the election to be held on the _____ day of _____ 19 _____. (If you will also be absent for any subsequent runoff election which is held two weeks after the initial election and wish for an absentee ballot for the runoff to be sent to your absentee address, check here [])

(If a ballot is requested for a primary election, print your political party preference in this space _____.)

I am a qualified elector and am registered to vote in the _____ precinct and _____ State House of Representatives District. (If known.). My registration certificate number is _____. My full name is _____.

Please Print

I hereby swear or affirm, UNDER PENALTY OF LAW, that I will be absent from my county of residence on election day during the hours the polls are open or unable to appear at the polling place because of physical disability, employment obligations requiring that I be at my place of employment in my county of residence during the hours the polls are open, responsibilities as a poll manager, county registration board member or staff, or county election commission member or staff, and that I am eligible to vote by absentee ballot under one of the following categories:

(CHECK APPROPRIATE BOX)

[] 1. Students, their spouses, and dependents residing with them. (The term 'students' shall mean all persons residing outside of the counties of their respective residences, enrolled in an institution of learning.)

[] 2. Armed Forces, Merchant Marine, their spouses, and dependents residing with them.

[] 3. Persons serving with the American Red Cross or with the United Service Organizations who are attached to and serving with the Armed Forces of the United States, their spouses, and dependents residing with them.

[] 4. Employment. (The term 'employment' means those persons who by virtue of their employment obligations will be absent from their county of residence on election day during the hours the polls are open and who will be unable to vote in person, those persons who are required by their employment obligations to be at their place of employment in their county of residence during the entire hours that the polls are open and will be unable to vote in person; and further, must present written certification of such obligations, signed by their employer, to the county registration board.)

[] 5. Physically disabled person. (The term 'physically disabled person' means a person who because of injury or illness, cannot be present in person at his voting place on election day whether physically present inside or outside his county of residence.)

[] 6. Governmental employees, their spouses, and dependents residing with them, who are out of their county of residence on election day during the hours the polls are open.

[] 7. Death in family, or attending funeral within a three-day period of election.

[] 8. Persons on vacation (who by virtue of vacation plans will be absent from their county of residence and unable to vote in person).

[] 9. Poll managers and county voter registration board members and staff, and county election commission members and staff, working on election day.

(Persons in this category are entitled to vote by absentee ballot whether physically present inside or outside of their county of residence on election day during the hours the polls are open.)

[] 10. Overseas citizens.

My home address in South Carolina as shown on my registration certificate is:

My absentee mailing address (address to which absentee ballot should be mailed) is:

Signature

“Social Security or Identification Number”

HISTORY: 1962 Code § 23-444; 1953 (48) 423; 1971 (57) 85; 1975 (59) 815; 1982 (62) 1964; 1984 Act No. 266; 1984 Act No. 402.

Effects of Amendments—

The 1982 amendment deleted the provisions for voting by persons in the profession of ministry, teaching, medical in box number 9 to 8, and added box number 9 concerning poll managers and the county voter registration board staff workers. The amendment also made changes to the application form following box number 9.

§ 7-15-350. Verification of registration.

Upon the receipt of a completed application form from any person, qualified to receive an absentee ballot under the provisions of § 7-15-320, the registration board shall verify if such applicant is registered in the precinct of his residence. If no record of such applicant's registration is found, the board shall immediately forward to such applicant a registration form as provided in § 7-15-120. When any such person is subse

quently found to be registered, the board of registration shall insure his receipt of a ballot as provided in this article.

HISTORY: 1982 (62) 1964.

Attorney General's Opinions

If a person attempting to vote by absentee ballot is not on the list of persons entitled to vote by absentee ballot, it would be grounds to challenge the ballot. Op. Atty. Gen. to Ms. Eloise P. Kirkland, May 28, 1976.

§ 7-15-360. Furnishing ballots and envelopes.

The board of registration of each county shall be furnished by the commissioners of election of the county or the county committee for each political party holding a primary a sufficient number of ballots and envelopes not to exceed fifteen percent of the number of registered voters in that county to enable the board of registration to deliver such materials to qualified electors desiring to vote by absentee ballot.

HISTORY: 1982 (62) 1964

§ 7-15-365 Ballots and instructions furnished by county board of registration.

The board of registration of each county must be furnished by the municipal election commission of each municipality holding an election or the executive committee of a municipal party holding a primary, a sufficient number of ballots, envelopes, and instructions to the absentee voter not to exceed fifteen percent of the number of registered voters in the municipality and sufficient postage to enable the board of registration to deliver materials to qualified electors desiring to vote by absentee ballot. The envelope required by item (4) of Section 7-15-370 must bear the return address of the county board of registration.

HISTORY: 1984 Act No. 266.

§ 7-15-370. Furnishing ballots and envelopes; duties of county registration board.

Upon receipt of the ballots and envelopes, the county registration board shall as soon as possible furnish the following items to each person qualified to receive an absentee ballot and who has validly completed a written application for an absentee ballot:

- (1) One of each ballot to be used in the election;
- (2) Printed instructions as to the marking, folding and return of each ballot and as to the signing (and return) of the oath;
- (3) An unmarked envelope in which all completed ballots are to be placed;
- (4) A return-addressed envelope imprinted on the back with the oath set forth in § 7-15-385 to be used for the return of the unmarked envelope (and enclosed ballots) to the board of registration;

(5) Any additional oath, instructions or information necessary to enable such absentee ballot applicant to execute and return a ballot legally acceptable by the officials charged with conducting such election.

The Board of registration shall record in the record book required by § 7-15-330 to be kept by the board the date such materials are requested by written application and the date they are issued to the qualified elector. Election materials which are mailed shall be sent to the voter's absentee mailing address.

HISTORY: 1982 (62) 1964

Cross references—

As to notice that an absentee ballot will not be counted because of irregularities, see § 7-15-420.

§ 7-15-375. Return envelope for absentee ballot.

The return-addressed envelope required by item (4) of § 7-15-370 to be sent to each absentee ballot applicant shall have printed on its face in the upper left hand corner the words 'Absentee ballots for _____ County, _____ (county seat), South Carolina.' All blanks on the face of the envelope shall be filled in by the county board of registration prior to the issuance of the ballot to the absentee ballot applicant. On the back shall appear blanks which the voter shall fill in with his name and address.

HISTORY: 1982 (62) 1964.

§ 7-15-380. Oath of absentee ballot applicant.

The oath, which is required by § 7-15-370 to be imprinted on the return-addressed envelope, furnished each absentee ballot applicant, shall be signed by the absentee ballot applicant and witnessed. The address of the witness shall appear on the oath. The oath shall be in the following form:

I hereby swear (or affirm) that I am duly qualified to vote at this election according to the Constitution of the State of South Carolina, that I have not voted during this election, that the ballot or ballots contained in this envelope is my ballot and that I have received no assistance in voting my ballot that I would not have been entitled to receive had I voted in person at my voting precinct.

Signature of Voter

Dated on this _____ day _____ of 19_____

Signature of Witness

Address of Witness

HISTORY: 1982 (62) 1964

Cross references—

As to not counting a ballot in absence of the oath, see § 7-15-420

§ 7-15-385. Marking ballot; return; records; storage.

Upon receipt of the ballot or ballots the absentee ballot applicant shall mark each ballot on which he wishes to vote and placed each ballot in the single unmarked envelope which in turn shall be place in the return-addressed envelope. The applicant shall then return such return- addressed envelope in compliance with the instructions received by him with the ballot. Signed and witnessed on each return envelope shall be the oath set forth in § 7-15-380. The board of registration shall record in the record book required by § 7-15-330 to be kept by the board the date the returned addressed envelope with witnessed oath and enclosed ballot or ballots is received by the board. The board shall then securely store such envelopes in a locked box or boxes within the office of the registration board.

HISTORY: 1982 (62) 1964

§7-15-390. Absentee balloting in primary and special; municipal elections; .

Absentee balloting in the primary, special and municipal election must be in accordance with the provisions of Title 7.

HISTORY: 1982 (62) 1964, 1984 Act. No. 266

Cross references—

As to municipal elections, generally, see §§ 7-5-610 et seq.

§7-15-395. Responsibilities of political parties; expenses.

Any political party conducting a primary in this State is responsible for carrying out the provisions of this article by making ballots and election material available so that the persons named in §7-15-320 may be enabled to vote in primary elections. All expenses incurred by any political party in conducting elections subject to the provisions of this article shall be borne by such political party.

HISTORY: 1982 Act No. 280, §1, eff February 24, 1982.

§ 7-15-400. Special write-in absentee ballot.

(A) A qualified absentee elector as provided in subsection (C) of this section may apply not earlier than ninety days before an election for a special write-in absentee ballot. This ballot must be used for each general and special election and primaries for federal offices, statewide offices, and members of the General Assembly.

(B) The application for a special write-in absentee ballot may be made on the federal post card application form or on a form prescribed by the State Election Commission.

(C) In order to qualify for a special write-in absentee ballot, the voter must state that he is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated areas or extremely remote areas of the world. This statement may be made on the federal post card application or on a form prepared by the State Election Commission and supplied and returned with the special write-in absentee ballot.

(D) Upon receipt of this application, the County Board of Registration shall issue the special write-in absentee ballot which must be prescribed and provided by the State Election Commission. The ballot shall list the offices for election in the general election. It may list the candidates for office if known at the time of election. This ballot shall permit the elector to vote by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

ARTICLE 7

ABSENTEE VOTING PRECINCTS

§7-15-410. Absentee voting precinct shall be established in each county; location.

In each county there must be established an absentee voting precinct located in the office of the county board of registration. The county election commission, municipal election commission, county committee for each political party, or executive committee of each municipal party in the case of primary elections is responsible for the tabulation and reporting of ballots at the absentee voting precinct. The absentee ballots must remain in the custody of the county board of registration until transferred to the county election commission, municipal election commission, county committee for each political party or executive committee of each municipal party for the purpose of tabulation and reporting as provided in Section 7-15-420.

HISTORY: 1962 Code § 23-450.1; 1971 (57) 97; 1982 (62) 1964; 1984 Act. No. 266

Effect of Amendments—

The 1982 amendment substantially rewrote this section.

Attorney General's Opinions

If a person attempting to vote by absentee ballot is not on the list of persons entitled to vote by absentee ballot, it would be grounds to challenge the ballot. Op. Atty. Gen. to Ms. Eloise P. Kirkland, May 28, 1976.

§7-15-420. Receipt, tabulation and reporting of absentee ballots.

The county election commission, municipal election commission, county committee for each political party, or executive committee of each municipal party in the case of primary elections shall be responsible for the tabulation and reporting of absentee ballots. At the time of the closing of the polls, the managers appointed pursuant to Section 7-13-70 shall begin the process of tabulating the absentee ballots by making certain that each oath has been properly signed and witnessed and includes the address of the witness. No ballot may be counted unless the oath is properly signed and witnessed nor may any ballot be counted which is received by the county registration board after time for closing of the polls. The printed instructions required by item (2) of Section 7-15-370 to be sent each absentee ballot applicant must notify him that his vote may not be counted in either of these events. If a ballot is not challenged, the sealed return-addressed envelope must be opened by the managers, and the enclosed unmarked envelope removed and placed in a locked box or boxes until the polls close. After all return-addressed envelopes have been emptied in this manner, the managers must remove the ballots contained in the unmarked envelopes, placing each one in the ballot box provided for the applicable contest. When all absentee ballots have been placed in the ballot boxes, they must be tabulated and reported as a separate precinct in the same manner as other ballots of the county are counted on election day. The absentee voter precinct is a countywide precinct and a part of each election district in the county. If any ballot is challenged the return-addressed envelope may not be opened, but must be put aside and the procedure set forth in Section 7-13-830 must be utilized; but the absentee voter must be given reasonable notice of the challenged ballot.

HISTORY: 1962 Code § 23-450.2; 1971 (57) 97; 1980 (61) 1335; 1982 (62) 1964; 1984 Act No. 266

Effect of Amendments—

The 1980 amendment eliminated the requirement that the final tabulation of absentee ballots be included in the totals of the resident precinct of the absentee voter.

The 1982 amendment substantially rewrote this section.

Cross References—

As to procedure for issuance, marking and return of absentee ballots, see §7-15-200 et. seq.

Attorney General's Opinion

Use of a voting machine to record absentee ballot is not on the list of persons entitled to vote by absentee ballot, it would be grounds to challenge the ballot. Op. Atty. Gen. S. Mendelson, May 13, 1980.

If a person attempting to vote by absentee ballot, it would be grounds to challenge the ballot. Op. Atty. Gen. to Ms. Eloise P. Kirkland, May 28, 1976.

§ 7-15-430. Absentee voters shall be noted on registration lists; voting by persons who have been issued absentee ballots.

Prior to the distribution of voter registration lists to the various precincts, the election commissioners shall note opposite the name of each registered voter who has voted by absentee ballot the fact of such voting or that an absentee ballot has been issued to a voter, as the case may be.

No voter whose name is so marked on the registration list as having voted shall be permitted to vote in person in his resident precinct and no voter who has been issued an absentee ballot may vote whether such ballot has been cast or not, unless he shall furnish to the officials of his resident precinct a certificate from the county election commission that his absentee ballot has been returned to the commission unmarked.

Should any voter be issued an absentee ballot after the registration board has released the registration books to be used in the election to the county election commission, municipal election commission, county committee, executive committee of any municipal party, or poll managers, the board of registration shall immediately notify in writing the county election commission, municipal election commission, county committee, executive committee of any municipal party, or poll manager, as the case may be, of the name, addresses, and certificate number of each voter who has since been issued an absentee ballot and the registration books must be appropriately marked that the voter has been issued an absentee ballot.

Effect of Amendments—

The 1982 amendment substituted “county board of registration” for “election commissioners” in the first paragraph substituted “county board of registration” for “county election commission” in the second paragraph and added the third paragraph.

Cross references—

As to the effect of a voter receiving an absentee ballot, see §7-15-430.

HISTORY: 1962 Code § 450.3; 1971 (57) 97; 1982 (62) 1964; 1984 Act. No. 266.

Attorney General's Opinions

If a person attempting to vote by challenge the ballot. Op. Atty. Gen. absentee ballot is not on the list of to Ms. Eloise P. Kirkland, May 28, persons entitled to vote by absentee 1976. ballot, it would be grounds to

§ 7-15-440. List of persons issued and who cast absentee ballots.

The county election commission shall, after each election, prepare a list of all persons to whom absentee ballots were issued and all persons who cast absentee ballots. The list so compiled shall be made available for public inspection upon request.

HISTORY: 1962 Code § 23-450.4; 1971 (57) 97.

Cross references —

As to transmission of list of persons registered to vote and requesting absentee ballots, see § 7-15-190.

7-15-450. Application of article.

This article shall apply to political parties conducting a primary and any other authorities conducting an election.

HISTORY 1962 Code § 23-450.5; 1975 (59) 815; 1982 (62) 1964

CHAPTER 17

Canvass of Vote; Certificates and Records of Results

ARTICLE 1. County Boards of Canvassers.

ARTICLE 3. Board of State Canvassers; Duties of Secretary of State.

ARTICLE 5. Provisions Applicable to Primary Elections.

ARTICLE I

COUNTY BOARDS OF CANVASSERS

SEC.

- 7-17-10. Meeting and organization of county boards of canvassers.
- 7-17-20. Canvass of votes.
- 7-17-30. Protests and contests.
- 7-17-40. Poll lists shall accompany ballots in protests.
- 7-17-50. Hearings on protests or contests.
- 7-17-60. Right to and notice of appeal from decision of county board.
- 7-17-70. Hearing of appeals.
- 7-17-80. Statements and returns.
- 7-17-90. Duplicate statements shall be filed with clerk of county.
- 7-17-100. Separate statements of votes given for each candidate.

§ 7-17-10. Meeting and organization of county boards of canvassers.

The commissioners of election for Governor, Lieutenant Governor, State officers, circuit solicitors, members of the General Assembly and county officers or any of such officers shall meet in some convenient place at the county seat on the Thursday next following the election, before one o'clock in the afternoon of that day, and shall proceed to organize as and shall be the county board of canvassers. They may appoint some competent person as secretary. The chairman shall then proceed to administer the constitutional oath to each member of the board, as canvassers, and shall administer the constitutional oath to the secretary, and the secretary shall administer to the chairman the same oath that he shall have administered to the other members of the board. The commissioners of election for members of Congress and presidential electors or any of such officers shall likewise meet at the same time at the county seat and shall in like manner proceed to organize as and shall be the county board of canvassers for the election of the Federal officers aforesaid.

HISTORY: 1962 Code § 23-451; 1952 Code § 23-451; 1942 Code § 2310; 1932 Code § 2310; Civ. C. '22 § 244; Civ. C. '12 § 242; Civ. C. '02 § 216; G. S. 220; R. S. 174; 1882 (17) 1119; 1968 (55) 2316.

Cross references—

As to the State Board of Canvassers, see §§ 7-17-210 et seq.

Research and Practice References—

26 Am Jur 2d, Elections §§ 299-301, 306.
29 CJS, Elections § 236.

CASE NOTES

This article governs the election for new counties. *State v Moore*, 54 SC 556, 32 SE 700 (1899); *Segars v Parrott*, 54 SC 1, 31 SE 677, 865 (1898).

New elections held not required. — A new election, asserted to be required because of the alleged disappearance of six ballots, was in fact not required, where the State Board of Canvassers erred in finding the evidence as to the lost ballots uncon-

troverted, the physical evidence also yielding the reasonable inference that there were no missing ballots, since all reasonable inferences must be drawn in favor of the validity of contested elections. *Trapp v. South Carolina Board of State Canvassers*, 273 SC 163, 255 SE2d 670 (1979).

Cited in *Smith v Saye*, 130 SC 20, 125 SE 269 (1924).

§ 7-17-20. Canvass of votes.

The county board of canvassers, respectively, shall then proceed to canvass the votes of the county and make such statements of such votes as the nature of the election shall require no later than noon on the Saturday next following the election and at such time shall transmit to the State Board of Canvassers the results of their findings.

HISTORY: 1962 Code § 23-452; 1952 Code § 23-452; 1942 Code § 2311; 1932 Code § 2311; Civ. C. '22 § 245; Civ. C. '12 § 243; Civ. C. '02 § 217; G. S. 121; R. S. 175; 1882 (17) 1119, 1170, 1172 § 3; 1968 (55) 2316.

Cross references—

As to mandatory recount in certain elections, see § 7-17-280.

Research and Practice References—

26 Am Jur 2d, Elections §§ 40, 45, 298-302.

ALR and L Ed Annotations—

Power to enjoin canvassing votes and declaring result of election. 1 ALR2d 588.

CASE NOTES

County Board of Canvassers should have held hearing on challenges that certain voters were not residents of precinct in which they voted where challenger, precinct manager, was present for purposes of sustaining challenges and thus, requirement of § 7-13-830 was met; challenger does not forfeit his right to challenge by failing to appear at meeting about which he was not told; thus, where Board did not give usual notice of its meeting, challenged ballots must be canvassed after notice to all interested parties; State Board of Canvassers' finding that evidence was uncontroverted that 15 ballots had been cast in given precinct, but in fact poll list and ballots established that only 9 votes were cast, must be reversed, and since all

reasonable inferences must be drawn in favor of validity of contested election, choice between two inferences must be made in favor of validity of contested election. *Trapp v South Carolina Board of State Canvassers* (1979, SC) 255 SE2d 670.

A candidate's challenge to results of an election to fill two vacancies on the county school board was timely even though it did not comply with the filing requirements of § 7-17-30 where the County Board of Canvassers had failed to canvass the votes or make a declaration of the results as required by § 7-17-20 and where the challenge had been filed prior to the county board's denial of the candidate's protest, which was the only official action ever taken by the county board relative to the election; the

election was properly invalidated on the ground that the "vote for two, strike two" voting instructions were violative of §7-13-1120 since they imposed full slate voting. *Sims v. Ham*, 275 SC 369, 271, SE 2d 316 (1980)

ATTORNEY GENERAL'S OPINIONS

Annexation elections — Of this chapter only Code 1962 §§ 23-451 and 23-453 "Code 1976 §§ 7-17-10 and 7-17-30 and this section (Code 1962 § 23-452 Code 1976 § 7-17-20 applicable to annexation elections. 1963-64 Ops. Atty. Gen., No. 1615 p. 32.

§ 7-17-30. Protests and contests.

The county boards shall decide all cases under protest or contest that may arise in their respective counties in the case of county officers and less than county offices. Any such protest or contest shall be filed in writing with the chairman of the board, together with a copy for each candidate in the race, by noon Monday following the day of the declaration by the board of the result of the election. *Provided, however*, that service upon the chairman may be perfected by depositing with the county sheriff one copy of the protest, together with a copy for each candidate in the race. The sheriff shall take immediate steps to deliver such copies to the chairman. The protest shall contain each ground thereof concisely stated separately. The chairman of the board shall forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the board for the purposes of hearing the protest.

HISTORY: 1962 Code § 23-453; 1952 Code § 23-453; 1942 Code § 2311; 1932 Code § 2311; Civ. C. '22 § 245; Civ. C. '12 § 243; Civ. C. '02 § 217; G. S. 121; R. S. 175; 1882 (17) 1119, 1170, 1172 § 3; 1968 (55) 2316; 1974 (58) 2124.

Research and Practice References—

- 26 Am Jur 2d, Elections § 331.
- 29 CJS, Elections § 237(1).
- 9 Am Jur Pl & Pr Forms (Rev ed), Elections, Forms 71 et seq. (election contest).

CASE NOTES

Right of appeal from decisions of board of county canvassers to the Board of State Canvassers is secured. *Segars v Parrott*, 54 SC 1, 31 SE 677, 865 (1898). See also, *Blake v Walker*, 23 SC 517 (1885); *State v Moore*, 54 SC 556, 32 SE 700 (1899).

The Board acts judicially. *State v Walker*, 5 SC 263 (1874); *State v Cockrell*, (1845); 1 McC (12 CL) 52; *State v Bruce*, 3 Brev (5 SCL) 264, (1812).

And its decisions are conclusive until revised or set aside by the proper authorities — *State v Bruce*, 3 Brev (5 1812 SCL) 264; *State v Deließeline*, 1 McC (12 SCL) 52; *State v Cockrell*, 2 Rich 1845 (31 SCL) 6; *State v Walker*, 5 SC 263 (1874).

In the rendition of a decision the majority of a quorum is sufficient. *State v Deließeline*, 1 McC (12 SCL) 52, (1821).

But a single member of the Board cannot act as the Board. *State v Nerland*, 7 SC 241 (1976).

Secondary evidence may be received or lost or destroyed ballots — *State v Nerland*, 7 SC 241 (1876).

For additional related cases, see *Ex parte Whipper*, 32 SC 5, 10 SE 379 (1890); *State v Chairman of County Canvassers*, 4 SC 485 (1873).

Unsuccessful candidate for county office who failed to file timely protest with county board of canvassers was barred from bring-

ing mandamus action for recount of vote. *Smith v Hendrix* 265 SC 417, 219 SE 2d 312 (1975).

Issues as to the sufficiency of ballot questions for constitutional amendments are subject to the protest and appeal procedure provided in the election laws, including the time for and forum in which protests and appeal are to be brought. *Taylor v Roche* (271 SC 505, 248 SE 2d 580).

A candidate's challenge to results of an election to fill two vacancies on the county school board was timely even though it did not comply with the filing requirements of §7-17-30 where the County Board of

Canvassers had failed to canvass the votes or make a declaration of the results as required by § 7-17-20 and where the challenge had been filed prior to the county board's denial of the candidate's protest, which was the only official action ever taken by the county board relative to the election; the election was properly invalidated on the ground that the "vote for two, strike two" voting instructions were violative of § 7-13-1120 since they imposed full state voting. *Sims v Ham* (1980, SC) 271 SE 2d 316 (1980, SC) 271 SE2d 16. 275 SC 369, 271 SE 2d 316 (1980).

ATTORNEY GENERAL'S OPINIONS

Annexation elections—Of this chapter, only this section and 7-17-20 and 7-17-30 are applicable to annexation elections. 1963-64 Ops. Att'y Gen., No 1615, p 32.

Referendums under Home Rule Act not canvassed by State Board. — Referendums

held pursuant to the Home Rule Act would not be classified at general elections, and hence the results of the election would not be canvassed by the Board of State Canvassers. 1974-75 Op. Att'y Gen., No. 4103, p. 181.

§ 7-17-40. Poll lists shall accompany ballots in protests.

The poll list of each polling place in a general, special or primary election shall accompany the ballots, printouts or other form of voter tabulation in each proceeding in which the votes cast at such polling place are involved in a protest.

HISTORY: 1962 Code § 23-453.01; 1973 (58) 1859.

§ 7-17-50. Hearings on protests or contests.

The board shall hear the protest or contest on Thursday following the deadline for filing same. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross-examine witnesses and to produce evidence relevant to the grounds of the protest.

The chairman of the board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest, the board shall determine all issues by majority vote and forthwith certify the results of the election.

The board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race and the

chairman of the State Board of Canvassers shall be immediately notified of the board's decision.

HISTORY: 1962 Code § 23-453.1; 1968 (55) 2316.

§ 7-17-60. Right to and notice of appeal from decision of county board.

The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made not later than noon Monday next following such decision by serving such notices on the chairman of the State Board. *Provided*, that service may be perfected by depositing at the office of the Chief of the State Law-Enforcement Division a copy of the grounds of appeal. A sufficient number of copies to be served upon all candidates in the protested race shall also be delivered to the county sheriff. Such officers shall take all steps necessary to deliver the notices to the respective parties.

HISTORY: 1962 Code § 23-453.2; 1968 (55) 2316.

CASE NOTES

Code 1962 § 10-2256 was inapplicable to election contest where unsuccessful candidate, seeking second recount of close vote, failed to obtain prior permission of circuit court, and failed to properly pursue statutory remedy provided by Code 1962 §§ 23-453 and 23-453.2. *Smith v. Hen-*

drix, 265 SC 417, 219 SE 2d (1975).

Unsuccessful candidate for county office who failed to file timely protest with county board of canvassers was barred from bringing mandamus action for recount of vote. *Smith v. Hendrix* 265 SC 417, 219 SE 2d (1975).

§ 7-17-70. Hearing of appeals.

The State Board shall meet in Columbia not later than noon Wednesday next following the filing of any notice perfected under § 7-17-60 for the purpose of hearing appeals. The appellant and each other candidate in the protested race shall have the right to be present at such hearing, to be represented by counsel and to be heard on the merits of the appeal. The State Board shall be bound by the facts as determined by the county board. *Provided, however*, that if in the opinion of at least two members of the State Board such facts should be reviewed, then a hearing de novo shall be held by the State Board. In the event of such review, the State Board may receive any new evidence or exhibits as it shall in its discretion deem necessary to determine the appeal. The State Board shall remain in session until all such appeals have been disposed of.

HISTORY: 1962 Code § 23-453.3; 1968 (55) 2316.

§ 7-17-80. Statements and returns.

The boards of county canvassers shall make such statements of the votes of the precincts of each county as the nature of the election shall require, within ten days from their first meeting, and shall transmit to the Board of State Canvassers any protest and all papers relating to the election.

HISTORY: 1962 Code § 23-454; 1952 Code § 23-454; 1942 Code § 2311; 1932 Code § 2311; Civ. C. '22 § 245; Civ. C. '12 § 243; Civ. C. '02 § 217; G. S. 121; R. S. 175; 1882 (17) 1119, 1170, 1172 § 3; 1968 (55) 2787.

Research and Practice References—

29 CJS, Elections § 237(4).

ALR and L Ed Annotations—

Power to enjoin canvassing votes and declaring result of election. 1 ALR2d 588.

§ 7-17-90. Duplicate statements shall be filed with clerk of county.

Except in the case of the election for electors for President and Vice-President, duplicate statements shall be made and filed in the office of the clerk of the county or, if there be no such clerk duly qualified according to law, in the office of the State Election Commission.

HISTORY: 1962 Code § 23-455; 1952 Code § 23-455; 1942 Code § 2312; 1932 Code § 2312; Civ. C. '22 § 246; Civ. C. '12 § 244; Civ. C. '02 § 218; G. S. 122; R. S. 176; 1882 (17) 1119, 1170, 1172 § 3; 1971 (57) 85.

Research and Practice References—

29 CJS, Elections § 237(4).

§ 7-17-100. Separate statements of votes given for each candidate.

The board of county canvassers shall make separate statements of the whole number of votes given in the precincts of each county for representatives in Congress and separate statements of all other votes given for other officers. Such statements shall contain the names of the persons for whom such votes were given and the number of votes given for each, which shall be written out in words at full length.

HISTORY: 1962 Code § 23-456; 1952 Code § 23-456; 1942 Code § 2313; 1932 Code § 2313; Civ. C. '22 § 247; Civ. C. '12 § 245; Civ. C. '02 § 219; G. S. 123; R. S. 177; 1882 (17) 1119, 1170, 1172 § 3; 1968 (55) 2787.

Research and Practice References—

29 CJS, Elections § 237(4).

ARTICLE 3

BOARD OF STATE CANVASSERS; DUTIES OF SECRETARY OF STATE

SEC.

7-17-210. State Election Commission constitutes Board.

7-17-220. Meeting of Board.

7-17-230. Power to adjourn; procedure when all certified statements have not been received.

7-17-240. Board shall make certified statement of all votes cast.

7-17-250. Board shall declare persons elected and decide contested or protested cases; appeals.

7-17-260. What protested or contested cases shall be decided by State Board; filing and service.

7-17-270. Hearing of protest or contest; procedure at hearing; notice of decision; appeals.

7-17-280. Mandatory recounts.

7-17-290. Certificate of determination shall be delivered to Secretary of State.

7-17-300. Secretary of State shall record result of canvass.

7-17-310. Copies of determinations transmitted to persons elected and Governor.

7-17-320. Statements shall be printed in public newspapers.

7-17-330. Certain certificates of election shall be sent to Congress.

7-17-340. Record of elected county officers.

§ 7-17-210. State Election Commission constitutes Board.

The State Election Commission shall, ex officio, constitute the Board of State Canvassers.

HISTORY: 1962 Code § 23-471; 1952 Code § 23-471; 1942 Code § 2318; 1932 Code § 2318; Civ. C. '22 § 252; Civ. C. '12 § 250; Civ. C. '02 § 224; G. S. 128; R. S. 182; 1882 (17) 1120 § 41; 1968 (55) 2316.

Cross references—

As to Board of State Canvassers being ex officio the State Board of Voting Machine Commissioners, see § 7-19-1610.

As to the creation of the State Election Commission, see § 7-3-10.

Research and Practice References—

29 CJS, Elections § 236.

§ 7-17-220. Meeting of Board.

The Board of State Canvassers shall meet at the office of the Election Commission within ten days after any general election for the purpose of canvassing the vote for all officers voted for at such election, including the vote for the electors for President and Vice-President, and for the purpose of canvassing the vote on all Constitutional Amendments and questions and other issues.

HISTORY: 1962 Code § 23-473; 1952 Code § 23-473; 1942 Code § 2317; 1932 Code § 2317; Civ. C. '22 § 251; Civ. C. '12 § 249; Civ. C. '02 § 223; G. S. 127; R. S. 181; 1882 (17) 1120; 1968 (55) 2316; 1974 (58) 2188.

Research and Practice References—

29 CJS, Elections § 236.

ATTORNEY GENERAL'S OPINIONS

To permit the Board of State Canvassers to convene a meeting by way of a conference telephone call with each member at his residence rather than at the office of the Election Commission would be in contravention of Code 1962 § 23-472 [local law], as amended. 1974-75 Ops Atty Gen, No 4213, p. 256.

To permit the Board of State Canvassers to convene a meeting by way

of a conference telephone call with each member at his residence rather than at the office of the Election Commission would be in contravention of Section 23-472 [1976 Code § 7-17-220], Code of Laws of South Carolina, 1962, as amended. 1976-77 Op Atty Gen, No 77-175, p 137.

§ 7-17-230. Power to adjourn; procedure when all certified statements have not been received.

The Board shall have power to adjourn from day to day for a term not exceeding fifteen days. In case all the certified statements for the election of electors for President and Vice-President shall not have been received on the day set for the meeting of the Board, the Board may adjourn from day to day until the same shall have been received, not exceeding five days; and if at the expiration of four days certified copies of the statements of the county canvassers shall not have been received from any county, the Board shall proceed to canvass upon such of the statements as shall have been received.

HISTORY: 1962 Code § 23-474; 1952 Code § 23-474; 1942 Code §§ 2323, 2339; 1932 Code §§ 2323, 2339; Civ. C. '22 §§ 257, 272; Civ. C. '12 §§ 255, 269; Civ. C. '02 §§ 229, 242; G. S. 133, 146; R. S. 187, 200; 1882 (17) 1123.

CASE NOTES

The time fixed by the statute within which the boards are required to discharge their duties necessitates that the amount of time allowed for the production of witnesses and the hearing of the appeal be within the Board's discretion. *State v. State Board of Canvassers*, 86 SC 451, 68 SE 676 (1910).

§ 7-17-240. Board shall make certified statement of all votes cast.

The Board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for and against constitutional amendments and other questions and issues and for the various officers, including electors for President and Vice-President and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct and subscribe the same with their proper names.

HISTORY: 1962 Code § 23-475; 1952 Code § 23-475; 1942 Code § 2320; 1932 Code § 2320; Civ. C. '22 § 254; Civ. C. '12 § 252; Civ. C. '02 § 226; G. S. 130; R. S. 184; 1884 (17) 1120 § 43; 1974 (58) 2187.

Research and Practice References—

29 CJS, Elections § 237(4).

§ 7-17-250. Board shall declare persons elected and decide contested or protested cases; appeals.

Upon such statements the Board shall then proceed to determine and declare what persons have been duly elected to such offices. The Board shall act in an appellate judicial capacity in all cases contested or protested that come before it on appeals from county boards of canvassers.

Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court. Notice of appeals shall be served within ten days of the Board's decision. *Provided, however,* that when a contest or protest concerns the election of a State Senator, appeals from decisions of the State Board shall be only to the Senate and when the election of a member of the House of Representatives is concerned, the appeal shall be only to the House of Representatives.

HISTORY: 1962 Code § 23-476; 1952 Code § 23-476; 1942 Code § 2322; 1932 Code § 2322; Civ. C. '22 § 256; Civ. C. '12 § 254; Civ. C. '02 § 228; G. S. 132; R. S. 186; 1882 (17) 1120; 1968 (55) 2316; 1974 (58) 2182.

Cross references—

As to the county board of canvassers, see §§ 7-17-10 et seq.

Research and Practice References—

26 Am Jur 2d, Elections § 358.

29 CJS, Elections § 237(1).

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Form 177 (appeal bond).

CASE NOTES

1. In general.
2. Nature and functions of board.
3. Review and revision of decisions of board.
4. —In election of State Senators.

Nor does title to office depend on the decision of the Board of State Canvassers where such title is not contested.—*Ex parte Smith*, 8 SC 495 (1877).

Elections will not be invalidated because of immaterial irregularity.—*State v Harmon, Chev* (25 SCL) 265; *Wright v State Board of Canvassers*, 76 SC 574, 57 SE 536 (1907).

1. In general

When the State Board on appeal declines to act, or is equally divided on the question appealed, the decision of the county board of canvassers stands. *State v Walker*, 5 SC 263 (1874).

2. Nature and functions of board

The Board of State Canvassers is, by the express language of this section

[Code 1962 § 23-476], a judicial tribunal. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

Which performs both judicial and ministerial duties.—Two separate and abstract duties are set out for the State canvassers to perform, one of which is ministerial and the other judicial. If there is no appeal from the county board of canvassers, then the duty required by the Board of State Canvassers is ministerial. *Ex parte Elliot*, 33 SC 602, 12 SE 423 (1890). See also, *State v Hayne*, 8 SC 367 (1876); *Ex parte Mackey*, 15 SC 322 (1881).

It is an appellate tribunal.—In the sense of the act, the Board is not an inferior court but is, in itself, an appellate tribunal. *Ex parte Whipper*, 32 SC 5, 10 SE 579 (1890).

3. Review and revision of decisions of board

Decisions are final.—The decisions of the State Board of Canvassers are final and cannot be reviewed by appeal to the Supreme Court. *Ex parte Riggs*, 52 SC 298, 29 SE 645 (1898), cited with approval in *Segars v Parrott*, 54 SC 1, 31 SE 677, 865 (1898); *Ex parte Whipper*, 32 SC 5, 10 SE 579 (1890).

Unless findings of fact are wholly unsupported by evidence.—The Supreme Court will not review findings of fact by the Board of State Canvassers unless such findings are wholly unsupported by the evidence. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

And the action of the Board cannot be reviewed or revised by mandamus. *Ex parte Scarborough*, 34 SC 13, 12 SE 666 (1891).

Unless it is to enforce a duty of Board which is purely ministerial.—*Ex parte Mackey*, 15 SC 322 (1881); *State v Jones*, 83 SC 432, 65 SE 444 (1909).

But its decisions may be reviewed by certiorari.—At the most the decisions of the Board of State Canvassers can be reviewed by the Supreme Court under a writ of certiorari issued by that court for errors of law. *Ex parte Riggs*, 52 SC 298, 29 SE 645 (1898).

A decision of the Board of State Canvassers is subject to review on certiorari as to errors of law only. *Redfearn v Board of State Canvassers*, 234 SC 113, 107 SE2d 10 (1959).

Remedy in cases of illegal or erroneous returns.—It may be that if the return of the commissioners of elections is illegal or erroneous as a matter of law, the remedy would be by writ of certiorari as in the case of *Ex parte Riggs*, 52 SC 298, 29 SE 645 (1898); *Segars v Parrott*, 54 SC 1, 31 SE 677, 865 (1898).

But this does not include the action of the county board of canvassers.—The action of the county board of canvassers may be reversed on appeal to the State Board. The Supreme Court will not issue a writ of certiorari to review the county board's action. *State v Moore*, 54 SC 556, 52 SE 700 (1899).

The General Assembly has no power either to set aside or disregard such return of the Board, and until it is set aside or annulled in some form of proceeding recognized by law, it must be regarded as showing conclusively the result of the election. *Segars v Parrott*, 54 SC 1, 31 SE 677, 865

Unsuccessful candidate for county office who failed to file timely protest with county board of canvassers was barred from bringing mandamus action for recount of vote. *Smith v Hendrix* 265 SC 417, 219 SE2d 312 (1975). (1898).

4. —In election of State Senators

Return of Board may be reviewed by the State Senate in the election of Senators.—*Ex parte Scarborough*, 34 SC 13, 12 SE 666 (1891).

The power vested in the State Board of Canvassers to decide as judicial officers who, in a given case, has received the largest number of votes for the office of State Senator, is subject to the power vested in the Senate by the Constitution to judge the election returns and qualifications of its own members. *Anderson v Blackwell*, 168 SC 137, 167 SE 30 (1933).

§ 7-17-260. What protested or contested cases shall be decided by State Board; filing and service.

The State Board shall decide all cases under protest or contest that may arise in the case of Federal officers, State officers and officers involving more than one county. Any such protest or contest shall be filed in writing with the chairman of the Board, together with a copy for each candidate in the race, not later than noon of the fifth day following the canvassing of the votes for such offices by the Board; *provided however*, that service upon the Board may be perfected by depositing at the office of the Chief of the State Law-Enforcement Division a copy of the protest, together with a copy for each candidate in the race. The Chief shall take immediate steps to deliver such copies to the chairman. The protest shall contain each ground thereof concisely stated separately. The chairman of the Board shall forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the Board for the purposes of hearing the protest.

HISTORY: 1962 Code § 23-476.1; 1968 (55) 2316.

Cross references—

As to requirement that the poll lists accompany the ballots in election protests, see § 7-17-40.

Research and Practice References—

29 CJS, Elections § 252.

§ 7-17-270. Hearing of protest or contest; procedure at hearing; notice of decision; appeals.

The Board, acting in a judicial capacity, shall hear the protest or contest not earlier than the fifth nor later than the tenth day following receipt of such protest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross-examine witnesses and to produce evidence relevant to the grounds of the protest. The chairman of the Board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest the Board shall determine all issues by majority vote and forthwith certify the results of the election.

The Board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the Board's decisions.

Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court.

HISTORY: 1962 Code § 23-476.2; 1968 (55) 2316; 1974 (58) 2197.

Research and Practice References—

29 CJS, Elections §§ 254 et seq.

§ 7-17-280. Mandatory recounts.

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidates not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

Whenever the difference between the number of votes cast in favor of and opposed to any constitutional amendment, question or other issue is not more than one percent of the total vote cast thereon, the Board of State Canvassers shall order a recount of such votes to be made forthwith.

HISTORY: 1962 Code § 23-476.3; 1964 (53) 1744; 1974 (58) 2189; 1977 (69) 25.

Research and Practice References—

26 Am Jur 2d, Elections § 295.

29 CJS, Elections §§ 289-295.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Forms 121 et seq. (recounting ballots and recanvassing returns).

Attorney General's Opinions

A recount is mandatory only when the number of votes cast for one candidate and the number of votes cast for any other candidates is no more than one percent of the total votes which were cast for that office. Op. Atty. Gen. to Sherriff Ralph C. Freeman, June 15, 1982.

primary was 7,447 votes; one percent of this total vote would be seventy-five. Therefore, a mandatory recount would be necessary if there were seventy-five votes between the winner of the primary and any other candidate. Op. Atty. Gen. to Sheriff Ralph C. Freeman, June 15, 1982.

For example, the total votes cast in

§ 7-17-290. Certificate of determination shall be delivered to Secretary of State.

The Board shall make and subscribe, on the proper statement, a certificate of their determination and shall deliver the same to the Secretary of State.

HISTORY: 1962 Code § 23-477; 1952 Code § 23-477; 1942 Code § 2321; 1932 Code § 2321; Civ. C. '22 § 255; Civ. C. '12 § 253; Civ. C. '02 § 227; G. S. 113; R. S. 185; 1882 (17) 1120 § 44.

Cross references—

As to the Secretary of State, generally, see §§ 1-5-10 et seq.

§ 7-17-300. Secretary of State shall record result of canvass.

The Secretary of State shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the Board of State Canvassers and every dissent or protest that shall have been delivered to him by a canvasser.

HISTORY: 1962 Code § 23-478; 1952 Code § 23-478; 1942 Code § 2325; 1932 Code § 2325; Civ. C. '22 § 259; Civ. C. '12 § 257; Civ. C. '02 § 231; G. S. 135; R. S. 189; 1882 (17) 1121 § 48.

Cross references—As to certification determination of presidential electors, see §7-19-70.

§ 7-17-310. Copies of determinations transmitted to persons elected and Governor.

The Secretary of State shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected and a like copy to the Governor.

HISTORY: 1962 Code § 23-479; 1952 Code § 23-479; 1942 Code §§ 2326, 2341; 1932 Code §§ 2326, 2341; Civ. C. '22 §§ 260, 274; Civ. C. '12 §§ 257, 271; Civ. C. '02 §§ 231, 244; G. S. 135, 148; R. S. 189, 202; 1882 (17) 1121, 1123; 1968 (55) 2316.

CASE NOTES

The certificate here provided for is not the only evidence of election to the House of Representatives, and if such certificate be refused, a right to a seat may be shown otherwise. State v Hayne, 8 SC 367 (1876).

Cross references—As to the transmittal of copies of certified determinations as to presidential electors, see §7-19-70.

§7-17-320. Statements shall be printed in public newspapers.

The Secretary of State shall cause a copy of such certified statements and determinations to be printed in one or more public newspapers of this State.

HISTORY: 1962 Code § 23-480; 1952 Code § 23-480; 1942 Code § 2327; 1932 Code § 2327; Civ. C. '22 § 261; Civ. C. '12 § 259; Civ. C. '02 § 233; G. S. 137; R. S. 191; 1882 (17) 1121 § 50.

§ 7-17-330. Certain certificates of election shall be sent to Congress.

The Secretary of State shall prepare a general certificate, under the seal of the State and attested by him as Secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of such person as Representative of this State in Congress and shall transmit the same to such House of Representatives at their first meeting.

HISTORY: 1962 Code § 23-481; 1952 Code § 23-481; 1942 Code § 2328; 1932 Code § 2328; Civ. C. '22 § 262; Civ. C. '12 § 260; Civ. C. '02 § 234; G. S. 138; R. S. 192; 1882 (17) 1121 § 51.

§ 7-17-340. Record of elected county officers.

The Secretary of State shall enter in a book to be kept in his office the names of the respective county officers elected in this State, specifying the counties for which they were severally elected, their place of residence, the office for which they were respectively elected and their term of office.

HISTORY: 1962 Code § 23-482; 1952 Code § 23-482; 1942 Code § 2329; 1932 Code § 2329; Civ. C. '22 § 263; Civ. C. '12 § 261; Civ. C. '02 § 235; G. S. 139; R. S. 193; 1882 (17) 1121 § 52.

ARTICLE 5

PROVISIONS APPLICABLE TO PRIMARY ELECTIONS

Sec.

- 7-17-510. Canvass and declaration of results by county and State committees.
- 7-17-520. Protests and contests generally; filing and service.
- 7-17-530. Hearing by county executive committee.
- 7-17-540. Right to and notice of appeal from decision of county executive committee.
- 7-17-550. Hearing of appeals by State executive committee.
- 7-17-560. State executive committee to hear certain protests and contests; place of hearing; filing; notice and service.
- 7-17-570. Procedure for hearing protest or contest; notice of decision.
- 7-17-580. Appeal of protests and contests in municipal primaries.
- 7-17-590. Board of State Canvassers for Municipal Primaries.
- 7-17-600. No candidate shall be declared nominated in first primary without majority vote.
- 7-17-610. What constitutes majority vote.
- 7-17-620. Unopposed candidates declared nominees.

§ 7-17-510. Canvass and declaration of results by county and State committees.

The county committees shall assemble at their respective court-houses on the morning of the second day after the election at eleven in the forenoon to tabulate the returns and declare the results of the primary, so far as it relates to members of the General Assembly and county officers and shall forward immediately to the State chairman at Columbia the result of the election in their respective counties for United States Senator, State officers, congressmen and solicitors. The State committee shall proceed to canvass the vote and declare the result of the primary in the State as to such last named officers.

HISTORY: 1962 Code § 23-491; 1952 Code § 23-491; 1950 (46) 2059.

Cross references—

As to mandatory recount in certain elections, see § 7-17-280.

ALR and L Ed Annotations—

Power to enjoin canvassing votes and declaring result of election. 1 ALR2d 588.

CASE NOTES

The state committee properly excluded certain ballots that were found outside ballot boxes where the requirement directing that such votes be decided at a meeting held pursuant to § 7-17-510 was not fulfilled. *Gregory v South Carolina Democratic Executive Committee* 271 SC 364, 247 SE 2d 439 (1978).

Failure of county committee to declare results. — The failure of a county committee to declare the results of a primary election and to instead take the unauthorized step of ordering another primary election short-circuited

the statutory process pertaining to primary elections; under such circumstances, the state committee correctly assumed jurisdiction over the election, including conducting a recount of the ballots and holding a hearing to consider protests; such hearing was properly held *de novo*, even though the record was technically flawed in that it did not reflect that 18 members affirmatively voted for review. *Gregory v South Carolina Democratic Executive Committee*. 271 SC 364, 247 SE 2d 439 (1978).

ATTORNEY GENERAL'S OPINIONS

New election held not required. — A new election, asserted to be required because of the alleged disappearance of six ballots, was in fact not required, where the State Board of Canvassers erred in finding the evidence as to the lost ballots uncontroverted, the physical

evidence also yielding the reasonable inference that there were no missing ballots, since all reasonable inferences must be drawn in favor of the validity of contested elections. *Trapp v South Carolina Board of Canvassers*, 273 SC 163, 255 SE 2d 269 (1979)

§ 7-17-520. Protests and contests generally; filing and service.

The protests and contests in the case of county officers, less than county officers and members of the State House of Representatives shall be filed in writing with the chairman of the county party executive committee, together with a copy for each candidate in the race not later than noon Monday following the day of the declaration by the county committee of the result of the election. *Provided, however,* that service may be perfected by depositing with the county sheriff one copy of the protest for the chairman to be served by him, together with a sufficient number of copies to be served upon all candidates in the protested or contested race. The sheriff shall take immediate steps to deliver such copies to the chairman. The protest shall contain each ground thereof concisely stated separately. The chairman shall forthwith serve upon each candidate in the protested race a copy of the protest, and serve a notice of the time and place of the meeting of the executive committee for the purpose of hearing the protest.

HISTORY: 1962 Code § 23-492; 1952 Code § 23-492; 1950 (46) 2059; 1968 (55) 2316.

Research and Practice References—

- 26 Am Jur 2d, Elections § 319.
- 29 CJS, Elections §§ 120 et seq.
- 9 Am Jur Pl & Pr Forms (Rev ed), Elections, Forms 71 et seq. (election contest).

ATTORNEY GENERAL'S OPINIONS

Protests and contests with respect to State Senators must be filed with the State committee and decided by the State committee. 1965-66 Ops. Att'y Gen., No 2076, p 171.

§ 7-17-530. Hearing by county executive committee.

The executive committee shall hear the protest or contest on Thursday following the deadline for filing same. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race shall have the right to be present at the hearing set by the committee, to be represented by counsel, to examine and cross-examine witnesses and to produce evidence relevant to the grounds of protest.

The chairman of the committee shall provide and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing on the

protests the committee shall determine all issues by majority vote and forthwith certify the results of the election.

The committee shall remain in session until a conclusion has been reached. All candidates in the protested or contested race and the chairman of the State executive committee shall be immediately notified of the decision.

HISTORY: 1962 Code § 23-492.1; 1968 (55) 2316.

Research and Practice References—

29 CJS, Elections § 127.

§ 7-17-540. Right to and notice of appeal from decision of county executive committee.

The decision of the county executive committee may be appealed to the State executive committee by any candidate adversely affected thereby. Notice of such appeal and the grounds thereof shall be made not later than three o'clock P.M., Friday next following such decision by serving such notice on the chairman of the State committee. *Provided*, that service may be perfected by depositing at the office of the Chief of the State Law-Enforcement Division a copy of the notice and grounds of appeal. A sufficient number of copies to be served upon all candidates in the protested race shall also be delivered to the county sheriff. Such officers shall take all steps necessary to deliver the notices to the respective parties.

HISTORY: 1962 Code § 23-492.2; 1968 (55) 2316.

Research and Practice References—

29 CJS, Elections § 128.

§ 7-17-550. Hearing of appeals by State executive committee.

The State executive committee shall meet in Columbia not later than twelve noon, Saturday next following the filing of any notice perfected under § 7-17-540, for the purpose of hearing appeals. The appellant and each other candidate in the protested race shall have the right to be present at such hearing, to be represented by counsel and to be heard on the merits of the appeal. The State committee shall be bound by the facts as determined by the county committee. *Provided, however*, that if in the opinion of at least eighteen members of the State committee such facts should be reviewed, then a hearing de novo shall be held by the State committee. In the event of such review, the State committee may receive any new evidence or exhibits as it shall in its discretion deem necessary to determine the appeal. The State committee shall remain in session until all such appeals have been disposed of.

HISTORY: 1962 Code § 23-492.3; 1968 (55) 2316.

Research and Practice References—
29 CJS, Elections § 128.

CASE NOTES

Failure of county committee to declare results. — The failure of a county committee to declare the results of a primary election and to instead take the unauthorized step of ordering another primary election short-circuited the statutory process pertaining to primary elections; under such circumstances, the state committee correctly assumed jurisdiction over the

election, including conducting a recount of the ballots and holding a hearing to consider protests; such hearing was properly held de novo, even though the record was technically flawed in that it did not reflect that 18 members affirmatively voted for review. *Gregory v South Carolina Democratic Executive Committee*. 271 SC 364, 247 SE 2d 439 (1978).

§ 7-17-560. State executive committee to hear certain protests and contests; place of hearing; filing; notice and service.

The State executive committee shall meet in Columbia at such place as may be designated by the chairman to hear and decide protests and contests that may arise in the case of Federal officers, State officers and officers involving more than one county. Any such protest or contest shall be filed in writing with the chairman of the committee, together with a copy for each candidate in the race, not later than noon on Monday following the canvassing of the votes for such officers by the committee; *provided, however*, that service upon the chairman may be perfected by depositing at the office of the Chief of the State Law-Enforcement Division a copy of the protest, together with a copy for each candidate in the race. The Chief shall take immediate steps to deliver such copies to the chairman. The protest shall contain each ground thereof concisely stated separately. The chairman of the committee shall forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the committee for the purposes of hearing the protest.

HISTORY: 1962 Code § 23-492.5; 1968 (55) 2316.

Research and Practice References—
29 CJS, Elections § 128.

§ 7-17-570. Procedure for hearing protest or contest; notice of decision.

The executive committee shall hear the protest or contest on Thursday following the deadline for filing the same. Testimony at the hearing shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross-examine witnesses and to produce evidence relevant to the grounds of the protest. The chairman of the committee shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest the committee shall determine all issues by majority vote and forthwith certify the results of the election.

The committee shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the committee's decision.

HISTORY: 1962 Code § 23-492.6; 1968 (55) 2316.

Research and Practice References—

29 CJS, Elections § 128.

§ 7-17-580. Appeal of protests and contests in municipal primaries.

In every political primary election held by any political party, organization or association in any of the cities or towns of this State for the purpose of choosing candidates for offices therein or the election of delegates to conventions thereof, the decision of any protest or contest that may arise shall be subject to appeal to the Board of State Canvassers of Municipal Primaries of this State herein provided for, and upon such appeal it shall be the duty of the committee or canvassing officers from whose decision such appeal may be made to transmit to said Board any protest and all papers relating to the election, with a copy of any evidence taken before them within ten days from their first meeting to canvass the returns of managers of such election.

HISTORY: 1962 Code § 23-493; 1952 Code § 23-493; 1950 (46) 2059.

Research and Practice References—

29 CJS, Elections § 128.

§ 7-17-590. Board of State Canvassers for Municipal Primaries.

The State executive committee of every political party in this State which may have such a committee shall immediately after its appointment elect from its body a committee of one from each congressional district which shall constitute the Board of State Canvassers for Municipal Primaries, each of whom, before hearing any appeal, shall take and subscribe an oath that he will fairly, impartially and honestly decide such an appeal. The Board shall, upon collection by their chairman of the estimated amount of the

expenses of such appeal from the person or persons making it, decide as judicial officers all cases under protest or contest that may come before them on appeal from any decision of such committees or canvassing officers from whose decisions appeal is made upon the papers transmitted to them by such committees or canvassing officers, and the person or persons declared by the Board to be nominated at such election shall be the nominee or nominees of such political party in the respective elections for which such nominations were made. Any vacancies in said Board shall be filled by the State executive committee or, in case it should not be in session, by the chairman of the State executive committee. The members of said board shall serve until the meeting of the next State executive committee. A majority of the members of the Board shall constitute a quorum at any meeting.

HISTORY: 1962 Code § 23-494; 1952 Code § 23-494; 1950 (46) 2059.

§ 7-17-600. No candidate shall be declared nominated in first primary without majority vote.

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

HISTORY: 1962 Code § 23-496; 1952 Code § 23-496; 1950 (46) 2059.

Research and Practice References—
29 CJS, Elections § 119(4).

§ 7-17-610. What constitutes majority vote.

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of §§ 7-17-600 and 7-13-50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a

majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

HISTORY: 1962 Code § 23-496.1; 1972 (57) 3087.

Research and Practice References—

26 Am Jur 2d, Elections § 328.

29 CJS, Elections § 119(4).

Attorney General's Opinions

When all the candidates received a majority vote, the two candidates receiving the highest number of votes would be declared the nominees. Op. Atty. Gen. to Hon. Eugene S. Blease, June 6, 1976.

§ 7-17-620. Unopposed candidates declared nominees.

All unopposed candidates in primary elections shall be declared the nominees of the party by the respective State or county committees.

HISTORY: 1962 Code § 23-497; 1952 Code § 23-497; 1950 (46) 2059.

Research and Practice References—

29 CJS, Elections § 119(4).

§ 7-17-700. Continuation of Protests in Primary or Nonpartisan election.

If any candidate in a primary or nonpartisan election dies after the election but before the time for filing a protest or dies after a protest has been timely filed, his political party or a representative duly appointed by the court may file or continue the protest on his behalf. The authority reviewing the protest may then certify the results and deny the protest or uphold the protest in which case it must order a new election. In this event, additional filings of candidacy will be allowed and a new election held in the manner the authority responsible for conducting the election provides.

§ 7-17-710. Continuation of protest in general elections.

If any candidate in a special or general election dies after the election but before the time for filing a protest or dies after a protest has been timely filed, his political party or a representative duly appointed by the court may file or continue the protest on his behalf. The authority reviewing the protest may then certify the results and deny the protest or uphold the protest in which case it must order a new election. In this event, additional filings of candidacy are allowed and a new election held in the manner the authority responsible for conducting the election provides.

CHAPTER 19

Special Provisions Applicable to Federal Elections

SEC.

- 7-19-10. Election of United States Senators.
- 7-19-20. Filling vacancies in office of United States Senator.
- 7-19-30. Election of Representatives in Congress.
- 7-19-40. Division of State into six congressional districts.
- 7-19-50. Each congressional district shall elect one member of Congress; procedure after new apportionment.
- 7-19-60. Writs of election in case State is given more Representatives.
- 7-19-70. Election of presidential electors; certificates of appointment.
- 7-19-80. Candidate for elector shall declare for which candidates he will vote; elector shall vote for candidates for whom he declared.
- 7-19-90. Meeting of electors; organization; balloting and certification of results.
- 7-19-100. Disposition of certificates and lists.
- 7-19-110. Compensation and expenses of electors.
- 7-19-120. Duties of State officials.

§ 7-19-10. Election of United States Senators.

A United States Senator shall be elected at the general election next preceding the expiration of the term of any United States Senator from this State.

HISTORY: 1962 Code § 23-551; 1952 Code § 23-551; 1942 Code § 2931; 1932 Code § 2331; Civ. C. '22 § 264; 1914 (29) 592; 1942 (42) 1520.

§ 7-19-20. Filling vacancies in office of United States Senator.

In case of a vacancy in the office of United States Senator from death, resignation or otherwise, the Governor may fill the place by appointment which shall be for the period of time intervening between the date of such appointment and January third following the next succeeding general election. But in the event any such vacancy shall occur less than one hundred days prior to any general election, the appointment shall be for the period of time intervening between the date of such appointment and January third following the second general election next succeeding. The Governor shall within five days after any such appointment order an election to be held in connection with and at the time of the general election immediately preceding the expiration date of such appointment if at the expiration of such appointment an unexpired term shall remain.

HISTORY: 1962 Code § 23-552; 1952 Code § 23-552; 1942 Code § 2931; 1932 Code § 2331; Civ. C. '22 § 264; 1914 (29) 592; 1942 (42) 1520.

§ 7-19-30. Election of Representatives in Congress.

Representatives in the House of Representatives of the Congress of the United States shall be chosen at each general election

in the several congressional districts by the qualified voters thereof.

HISTORY: 1962 Code § 23-553; 1952 Code § 23-553; 1942 Code § 2332; 1932 Code § 2332; Civ. C. '22 § 265; Civ. C. '12 § 262; Civ. C. '02 § 236; G. S. 112; R. S. 194; 1882 (17) 1117 § 25.

Research and Practice References—
25 Am Jur 2d, Elections § 8.

ALR and L. Ed Annotations—

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

§ 7-19-40. Division of State into six congressional districts.

NOTE

Districts are defined by court action. Section superseded by court order.

ATTORNEY GENERAL'S OPINIONS

District representation by congressmen elected in 1970.—Inasmuch as a 1971 statute changing the boundaries of congressional districts in South Carolina was intended to apply to the next general election to be held in 1972,

the congressmen in this State continued to represent the districts as they existed at the time the congressmen were elected in 1970. 1970-71 Ops. Att'y Gen., No 3218, p 201.

§ 7-19-50. Each congressional district shall elect one member of Congress; procedure after new apportionment.

Until the next apportionment be made by the Congress of the United States, each of such congressional districts shall be entitled to elect one member to represent this State in the Congress of the United States. After such new apportionment by Congress the General Assembly shall divide the State into as many congressional districts as the State is entitled to members in the House of Representatives.

HISTORY: 1962 Code § 23-555; 1952 Code § 23-555; 1942 Code § 2334; 1932 Code § 2334; Civ. C. '22 § 267; Civ. C. '12 § 264; Civ. C. '02 § 238; G. S. 142; R. S. 196; 1882 (17) 1122 § 5.

Cross references—

As to when apportionment takes effect, see SC Const, Art 3, § 5.

Research and Practice References—

25 Am Jur 2d, Elections §§ 13, 30, 34, 35.

26 Am Jur 2d, Elections § 370.

29 CJS, Elections § 54.

9 Am Jur Pl & Pr Forms (Rev ed), Elections, Forms 7, 8 (complaint in federal court to compel constitutional apportionment of legislative districts).

§ 7-19-60. Writs of election in case State is given more Representatives.

In case the Congress of the United States shall by any new apportionment give to this State more than six members of the House of Representatives and the General Assembly shall not be in session, the Governor shall by proclamation issue writs of election for congressmen at large, one or more, as the case may be.

HISTORY: 1962 Code § 29-556; 1952 Code § 29-556; 1942 Code § 2995; 1932 Code § 2995; Civ. C. '22 § 268; Civ. C. '12 § 265; Civ. C. '02 § 298; G. S. 142; R. S. 196; 1882 (17) 1122 § 5.

§ 7-19-70. Election of presidential electors; certificates of appointment.

Unless otherwise provided, the election of presidential electors shall be conducted and the returns made in the manner prescribed by this chapter for the election of state officers.

The names of candidates for electors of President and Vice President nominated by any political party recognized in this State under § 7-9-10 or by a valid petition shall be printed on the ballot. In place of their names, in accordance with the provisions of § 7-13-320, there shall be printed on the ballot names of the candidates for President and Vice President of each political party recognized in this State and the names of any petition candidates for President and Vice President. A vote for the candidates name on the ballot shall be a vote for the electors of the party by which those candidates were nominated or electors of petition candidates whose names have been filed with the Secretary of State.

Upon receipt of the certified determination of the Board of State Canvassers and delivered to him in accordance with § 7-17-300, the Secretary of State, under his hand and the seal of his office, as required by § 7-17-310. shall certify to the Governor the names of the persons elected to the office of elector for President and Vice President of the United States, as stated in the certified determination, who shall be deemed appointed as electors.

It shall be the duty of the Governor, as soon as practicable after the conclusion of the appointment of the electors pursuant to the laws of the State providing for the election and the appointment of the electors, to communicate by registered mail under the seal of the State to the Administrator of general Services a certificate of appointment of the electors, setting forth the names of the electors and the canvass or other ascertainment under the laws of this State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast. It shall also thereupon be the duty of the Governor to deliver to the electors of the State, on or before the day on which they are required by law to meet, six duplicate originals of the same certificate under the seal of the State. If there shall have been any final determination in the manner provided for by law of a controversy or contest

concerning the appointment of all or any of the electors, it shall be the duty of the Governor, as soon as practicable after the determination, to communicate under the seal of the State to the Administrator of General Services a certificate of such determination.

HISTORY: 1962 Code § 23-557; 1952 Code § 23-557; 1942 Code § 2336; 1932 Code § 2336; Civ. C. '22 § 269; Civ. C. '12 § 266; Civ. C. '02 § 239; G. S. 143; R. S. 197; 1882 (17) 1122 § 56; 1961 (52) 246.

Effects of Amendments—

The 1982 amendment deleted the first paragraph as it appears in the parent volume, and inserted the first three paragraphs to provide the names of candidates of a recognized political party for President and Vice President of the United States be placed on the ballot and that vote for them shall be a vote each elector nominated by the political party.

Research and Practice References—

25 Am Jur 2d, Elections § 9.

§ 7-19-80. Candidate for elector shall declare for which candidates he will vote; elector shall vote for candidates for whom he declared.

Each candidate for presidential and vice-presidential elector shall declare which candidate for president and vice-president he will vote for if elected. Those elected shall vote for the president and vice-president candidates for whom they declared. Any person selected to fill a vacancy in the electoral college shall vote for the candidates the elector whose place he is taking had declared for. The declaration shall be made to the Secretary of State on such form as he may require not later than sixty days prior to the general election for electors. No candidate for president and vice-president elector shall have his name placed on the ballot who fails to make such declaration by the prescribed time. Any elector who votes contrary to the provisions of this section shall be deemed guilty of violating the election laws of this State and upon conviction shall be punished according to law. Any registered elector shall have the right to institute proper action to require compliance with the provisions of this section. The Attorney General shall institute criminal action for any violation of the provision of this section. *Provided*, the executive committee of the party from which an elector of the electoral college was elected may relieve the elector from the obligation to vote for a specific candidate when, in its judgment, circumstances shall have arisen which, in the opinion of the committee, it would not be in the best interest of the State for the elector to cast his ballot for such a candidate.

HISTORY: 1962 Code § 23-557.1; 1971 (57) 270.

§ 7-19-90. Meeting of electors; organization; balloting and certification of results.

The electors for President and Vice President shall convene at the capitol, in the office of the Secretary of State, at eleven in the forenoon, on the first Monday after the second Wednesday in December next following their appointment, and shall proceed to effect a permanent organization by the election of a president and secretary from their own body. The electors shall next proceed to fill by ballot and by plurality of votes all vacancies in the electoral college occasioned by the death, refusal to serve, or neglect to attend, of any elector. The electors shall then and there vote by ballot for President and Vice President, one of whom at least shall not be an inhabitant of the same State with themselves.

The electors shall make and sign six certificates of all the votes given by them for President and Vice President, each of which certificates shall contain two distinct lists, one of the votes for President and the other for Vice President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by the Secretary of State by direction of the Governor. The electors shall seal up separately the certificates and lists of the electors so made by them, and certify upon each that the list of all the votes of the State given for President, and of all of the votes given for Vice President are contained therein.

HISTORY: 1962 Code § 23-558; 1952 Code § 23-558; 1942 Code § 2343; 1932 Code § 2343; Civ. C. '22 § 276; Civ. C. '12 § 273; Civ. C. '02 § 246; G. S. 153; R. S. 204; 1882 (17) 1124 § 66; 1885 (19) 25 § 1; 1889 (20) 365; 1936 (39) 1651; 1961 (52) 246.

§ 7-19-100. Disposition of certificates and lists.

The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the certificates and lists to the President of the Senate at the seat of government.

Second. Two of the certificates and lists shall be delivered to the Secretary of State of South Carolina, one of which shall be held subject to the order of the President of the Senate, and the other shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of the certificates and lists to the Administrator of General Services at the seat of government, one of which shall be held subject to the order of the President of the Senate.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled.

HISTORY: 1962 Code § 23-559; 1952 Code § 23-559; 1942 Code § 2345; 1932 Code § 2345; Civ. C. '22 § 278; Civ. C. '12 § 275; Civ. C. '02 § 248; G. S. 155; R. S. 206; 1882 (17) 1124 § 68; 1889 (20) 365; 1961 (52) 246.

§ 7-19-110. Compensation and expenses of electors.

Every elector for this State for the election of a president and vice-president of the United States who shall attend at any election of those officers and give his vote at the time and place appointed by law shall be entitled to receive for his attendance at such election and for traveling to and from his place of residence by the most usual route the regular mileage, subsistence and per diem allowance authorized for state boards, committees and commissions to be paid from appropriations to the office of the Secretary of State.

HISTORY: 1962 Code § 23-563; 1952 Code § 23-563; 1942 Code § 2349; 1932 Code § 2349; Civ. C. '22 § 282; Civ. C. '12 § 279; Civ. C. '02 § 252; G.S. 159; R.S. 210; 1882 (17) 1125; 1915 (29) 178; 1982 (62) 2086.

Effect of Amendments—

The 1982 amendment substituted the present provision for payment of the regular mileage, subsistence and per diem allowance for the former provision for payment of \$5.00 per day and actual traveling expenses, paid by the State Treasurer upon warrant of the Comptroller General.

§ 7-19-120. Duties of State officials.

The Governor, Secretary of State and other State officers shall perform such duties and functions in respect to the election of electors, the election of the President and Vice-President of the United States and certification of electors and results of such election as provided by the acts of Congress in relation thereto.

HISTORY: 1962 Code § 23-564; 1952 Code § 23-564; 1942 Code § 2344; 1932 Code § 2344; Civ. C. '22 § 277; Civ. C. '12 § 274; Civ. C. '02 § 247; G. S. 154; R. S. 205; 1882 (17) 1124 § 67; 1889 (20) 365; 1936 (39) 1651.

CHAPTER 21

Special Provisions Applicable to Election of State Senators and Members of House of Representatives

SEC.

7-21-10. No person shall seek more than one office of State Senator in any year.

7-21-20. Elections for State Senator shall be district-wide.

7-21-50. Application of provisions of this Title to office of State Senator and member of House of Representatives.

§ 7-21-10. No person shall seek more than one office of State Senator in any year.

No person shall be permitted to seek more than one office of State Senator in any election year.

HISTORY: 1962 Code § 23-281; 1966 (54) 2093.

Cross references—

As to number of nominees for Senator from any one county, see § 7-11-60.

As to apportionment of Senate, see § 2-1-60 Editor's note.

As to time of election, see § 2-1-60 Editor's note.

As to election of Senators in single-county district to which more than one Senator has been assigned, see § 2-1-60 Editor's note.

As to residence requirement in multi-county district, see § 2-1-60 Editor's note.

§ 7-21-20. Elections for State Senator shall be district-wide.

The election for the office of State Senator in all senatorial districts shall be district-wide.

HISTORY: 1962 Code § 23-282; 1966 (54) 2093.

§ 7-21-50. Application of provisions of this Title to office of State Senator and member of House of Representatives.

All of the provisions of Title 7 of the 1976 Code governing a State office shall apply to the offices of State Senator and of member of the House of Representatives except in those instances in which special provision is made for such offices and in those instances such special provisions shall control.

HISTORY: 1962 Code § 23-287; 1966 (54) 2093; 1974 (58) 2124.

CHAPTER 23
Election Expenses

Sec.

7-23-10. Expenses of general election officers.

7-23-20. Payment for notices of election.

7-23-40. Expenses payable by counties.

7-23-10 Expenses of general election officers

Commissioners of state and county general elections shall receive as expenses two hundred dollars per year, payable quarterly. Managers and clerks of general elections shall receive a per diem as is provided in the annual state general appropriations act. Each commissioner, manager, or clerk is entitled to mileage as is provided by law for state employees.

HISTORY: 1962 Code § 23-601; 1952 Code § 23-601; 1942 Code § 2316; 1932 Code § 2316; Civ. C. '22 § 250; Civ. C. '12 § 248; Civ. C. '02 § 222; G.S. 126, 152; R.S. 180; 1882 (17) 1100; 1883 (18) 260; 1966 (54) 2243; 1984 Act No. 288.

HISTORY: 1962 Code § 23-650; 1957 (50) 671.

Research and Practice References—

29 CJS, Elections § 326.

§ 7-23-20. Payment for notices of election.

Notices of election published in any public gazette or county newspaper by authority of the proper board of election commissioners, as required by law, shall be paid for at the rates prescribed by law for legal notices.

HISTORY: 1962 Code § 23-603; 1952 Code § 23-603; 1942 Code § 2316; 1932 Code § 2316; Civ. C. '22 § 250; Civ. C. '12 § 248; Civ. C. '02 § 222; G. S. 126, 152; R. S. 180; 1882 (17) 1100; 1883 (18) 260.

§ 7-23-40. Expenses payable by counties.

The governing bodies of the several counties shall audit and pay all accounts for necessary expenses incurred by the commissioners and managers of election for stationery, the making of election boxes, rents and similar expenses in elections held in this State.

HISTORY: 1962 Code § 23-605; 1952 Code § 23-605; 1942 Code § 2316; 1932 Code § 2316; Civ. C. '22 § 250; Civ. C. '12 § 248; Civ. C. '02 § 222; G. S. 126, 152; R. S. 180; 1882 (17) 1100; 1883 (18) 260.

Cross references—

As to cost of acquiring voting machines, see § 7-13-1660.

CHAPTER 25

Offenses Against the Election Laws

SEC.

- 7-25-10. False swearing in applying for registration.
- 7-25-20. Fraudulent registration or voting.
- 7-25-50. Bribery at elections.
- 7-25-60. Procuring or offering to procure votes by bribery.
- 7-25-70. Procuring or offering to procure votes by threats.
- 7-25-80. Threatening, intimidating, or abusing voters.
- 7-25-90. [Repealed.]
- 7-25-100. Allowing ballot to be seen, removing ballot from voting place, improper assistance, and related offenses.
- 7-25-110. Voting more than once at elections.
- 7-25-120. Impersonating a voter.
- 7-25-130. Arrest of person who impersonates a voter.
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- 7-25-150. Swearing falsely at elections or taking oath in another's name.
- 7-25-160. Wilful neglect or corrupt conduct on part of managers.
- 7-25-170. Wilful neglect or corrupt conduct by officers other than managers.
- 7-25-180. Unlawful distribution of campaign literature.
- 7-25-190. Illegal conduct at elections generally.

§ 7-25-10. False swearing in applying for registration.

Any person convicted of false swearing in the making of an application for registration shall be punished as for a misdemeanor.

§ 7-25-20. Fraudulent registration or voting.

Any person who shall fraudulently procure the registration of a name on the books of registration, shall fraudulently offer or attempt to vote such name or names, or shall fraudulently offer or attempt to vote in violation of this Title or under any false pretense as to any circumstances affecting his qualifications to vote

ATTORNEY GENERAL'S OPINIONS

City may not share expense of election.—An annexation election is a special election and, in absence of any statutory provision which permits or allows a city to share or bear a portion of this expense, the total expense must be borne by the county. 1965-66 Ops. Att'y Gen., No 2160, p 290.

§ 7-25-50. Bribery at elections.

If at any election held within this State, whether general, special or primary, for members of the Congress of the United States, members of the General Assembly of this State, sheriff, clerk, judge of probate or other county officer, mayor and aldermen of any city or intendant and wardens of any incorporated town or at any other election held within this State, any person shall, by the payment, delivery or promise of money or other article of value, procure another to vote for or against any particular candidate or measure, the person so promising and the person so voting shall each be guilty of a misdemeanor and, upon conviction thereof, shall, for the first offense, be fined in any sum not less than one hundred dollars nor more than five hundred dollars and imprisoned for any period of time not less than one month nor more than six months, and, for the second offense, shall be fined in any sum not less than five hundred dollars nor more than five thousand dollars and imprisoned for any period of time not less than three months nor more than twelve months.

HISTORY: 1962 Code § 23-654; 1952 Code § 23-654; 1950 (46) 2059.

Cross references—

As to bribery and corruption of public officers, see §§ 16-9-210 to 16-9-250.

As to bribery to obtain public office or accepting such bribes, see §§ 16-9-280 to 16-9-300.

Research and Practice References—¹26 Am Jur 2d, Elections § 377.
29 CJS, Elections § 332.

CASE NOTES

Activities of defendant, who induced each voter to apply for absentee ballot without regard to whether voter actually met requirements for absentee voting, who was present when each voter marked ballot and in some cases actually marked

ballot himself, who also provided voters with varying quantum of advice, and who personally paid each voter and collected each absentee ballot, tainted federal election process even though intended to influence only local election, and thus fell

squarely within prohibition of federal vote-buying statute. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i(c). **U.S. v. Mason, 673 F. 2d 737 (1982)**

To establish offense of vote-buying it is not necessary for the government to prove that vote-buying activities actually affected a federal contest, and a violation is established when the evidence shows that a defendant bought or offered to buy a vote

and that such activity exposes federal aspects of a mixed state/federal election to possibility of corruption takes place and whether or not the person participating had a specific intent to expose the federal action to such corruption Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i(c). **United States v. Carmichael, 685 F. 2d 903 (1982).**

§ 7-25-60. Procuring or offering to procure votes by bribery.

If at any election, general, special or primary, any person shall procure, or offer or propose to procure, another, by the payment, delivery or promise of money or other article of value, to vote for or against any particular candidate or measure or shall for the consideration of money or other article of value paid, delivered or promised, vote or offer or propose to vote for or against any particular candidate or measure, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined and imprisoned, at the discretion of the court.

HISTORY: 1962 Code § 23-655; 1952 Code § 23-655; 1950 (46) 2059.

CASE NOTES

Activities of defendant, who induced each voter to apply for absentee ballot without regard to whether voter actually met requirements for absentee voting, who was present when each voter marked ballot and in some cases actually marked ballot himself, who also provided voters with varying quantum of advice, and who personally paid each voter and collected each absentee ballot, tainted federal election process even though intended to influence only local election, and thus fell squarely within prohibition of federal vote-buying statute. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i(c). **United States v. Mason, 673 F. 2d 737 (1982).**

Although vote-buying in mixed state/federal election allegedly involved

only office of county sheriff, jurisdiction lay under federal statute proscribing vote-buying as there was possibility of corruption of the two federal contests in the primary because many of the envelopes containing absentee ballots were unsealed when they were picked up from voters and turned into one defendant and there was testimony that such defendant and several workers helped voters mark their absentee ballots not only for sherriffs race but for others as well and some of the 400 absentee ballots received in precinct apparent were voted in the congressional election. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i (c). **United States v. Carmichael, 685 F. 2d 903 (1982).**

§ 7-25-70. Procuring or offering to procure votes by threats.

At or before every election, general, special or primary, any person who shall, by threats or any other form of intimidation, procure or offer or promise to endeavor to procure another to

vote for or against any particular candidate in such election shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned at hard labor for not less than one month nor more than six months, or be punished both by such fine and such imprisonment, in the discretion of the court.

HISTORY: 1962 Code § 23-656; 1952 Code § 23-656; 1950 (46) 2059.

Research and Practice References—

26 Am Jur 2d, Elections § 383.

29 CJS, Elections § 333.

§ 7-25-80. Threatening, intimidating, or abusing voters.

If any person shall, at any of the elections, general, special or primary, in any city, town, ward or polling precinct, threaten, mistreat or abuse any voter with a view to control or intimidate him in the free exercise of his right of suffrage, such offender shall upon conviction thereof suffer fine and imprisonment, at the discretion of the court.

HISTORY: 1962 Code § 23-657; 1952 Code § 23-657; 1950 (46) 2059.

Cross references—

As to assault, etc., on account of political opinions or the exercise of civil rights, see § 16-17-560.

As to discharging employees for political opinions or the exercise of civil rights, see § 16-17-560.

As to ejecting a citizen from rented property because of political opinions or the exercise of civil rights, see § 16-17-560.

Research and Practice References—

26 Am Jur 2d, Elections § 383.

29 CJS, Elections § 333.

§ 7-25-90. Repealed by 1978 (61) 808.

§ 7-25-100. Allowing ballot to be seen, removing ballot from voting place, improper assistance, and related offenses.

In any election, general, special or primary, any voter who shall (a) except as provided by law, allow his ballot to be seen by any person, (b) take or remove or attempt to take or remove any ballot from the polling place before the close of the polls, (c) place any mark upon his ballot by which it may be identified, (d) take into the election booth any mechanical device to enable him to mark his ballot or (e) remain longer than the specified time allowed by law in the booth or compartment after having been notified that his time has expired and requested by a manager to leave the compartment or booth and any person who shall (a) interfere with

any voter who is inside of the polling place or is marking his ballot, (b) unduly influence or attempt to influence unduly any voter in the preparation of his ballot, (c) endeavor to induce any voter to show how he marks or has marked his ballot or (d) aid or attempt to aid any voter by means of any mechanical device whatever in marking his ballot shall be fined not exceeding one hundred dollars or be imprisoned not exceeding thirty days.

HISTORY: 1962 Code § 23-659; 1952 Code § 23-659; 1950 (46) 2059.

§ 7-25-110. Voting more than once at elections.

If any person qualified by the Constitution and laws of this State to vote at any general, special or primary election for a member of the Congress of the United States, members of the General Assembly, sheriff, clerk, judge of probate or any other county officer, mayor and aldermen of any city or intendant and wardens of any incorporated town or at any other election, whether general, special or primary, held within this State shall vote more than once at such election, for the same office, such person so voting more than once shall be fined or imprisoned at the discretion of the judge before whom the case shall be tried.

HISTORY: 1962 Code § 23-660; 1952 Code § 23-660; 1950 (46) 2059.

Research and Practice References—

26 Am Jur 2d, Elections § 375.

29 CJS, Elections § 325.

§ 7-25-120. Impersonating a voter.

It shall be unlawful for any person to impersonate or attempt to impersonate another person for the purpose of voting in any election, general, special or primary, of this State, whether municipal or State. Any person violating any of the provisions of this section shall, upon conviction, be imprisoned at hard labor for a period of not less than three months nor more than twelve months or by a fine of not less than three hundred dollars nor more than twelve hundred dollars, or both, at the discretion of the court. When such person is placed under bond, such bond shall be in a sum not less than six hundred dollars nor more than twelve hundred dollars.

HISTORY: 1962 Code § 23-661; 1952 Code § 23-661; 1950 (46) 2059.

Research and Practice References—

26 Am Jur 2d, Elections § 375.

§ 7-25-130. Arrest of person who impersonates a voter.

If any manager of election of this State report to the sheriff or other peace officer that a person has violated § 7-25-120 such peace officer shall arrest such person and have a proper warrant

sworn out. Any sheriff or police officer refusing to make an arrest when demand is made by the proper authorities for any violation of § 7-25-120 shall be subject to prosecution in the court of general sessions for malfeasance in office.

HISTORY: 1962 Code § 23-662; 1952 Code § 23-662; 1950 (46) 2059.

§ 7-25-140. Copies of certain election laws may be posted.

The county committee in any party primary and the commissioners of election or other electoral board in general and special elections in their discretion may post, or cause to be posted, a copy of §§ 7-25-120 to 7-25-140, printed on cardboard in as large type as a board twelve by twelve inches will carry, in each and every polling precinct.

HISTORY: 1962 Code § 23-663; 1952 Code § 23-663; 1950 (46) 2059.

§ 7-25-150. Swearing falsely at elections or taking oath in another's name.

Any voter who shall swear falsely at any election, general, special or primary, in taking the prescribed oath or shall impersonate another person and take the oath in his name in order to vote shall be guilty of perjury and be punished, upon conviction, as for perjury.

HISTORY: 1962 Code § 23-664; 1952 Code § 23-664; 1950 (46) 2059.

§ 7-25-160. Wilful neglect or corrupt conduct on part of managers.

Any manager at any election, general, special or primary, in this State who shall be guilty of wilfully violating any of the duties devolved by law upon such position shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars or imprisonment not to exceed six months. And any manager who shall be guilty of fraud or corruption in the management of such election shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not to exceed five hundred dollars or imprisoned for a term not to exceed six months, or both, in the discretion of the court.

HISTORY: 1962 Code § 23-665; 1952 Code § 23-665; 1950 (46) 2059.

Research and Practice References—

26 Am Jur 2d, Elections § 376.

29 CJS, Elections §§ 325, 327.

§ 7-25-170. Wilful neglect or corrupt conduct by officers other than managers.

If any officer, other than a manager at any election, on whom any duty is imposed by this Title, except under § 7-13-1170, Articles 1 and 3 of Chapter 17 and Chapters 19 and 23, shall be guilty of any wilful neglect of such duty or of any corrupt conduct

in executing it, and be thereof convicted, he shall be guilty of a misdemeanor punishable by fine not exceeding five hundred dollars or imprisonment at hard labor not exceeding one year.

HISTORY: 1962 Code § 23-666; 1952 Code § 23-666; 1950 (46) 2059.

Research and Practice References—

26 Am Jur 2d, Elections § 376.

29 CJS, Elections § 327.

§ 7-25-180. Unlawful distribution of campaign literature.

It shall be unlawful on any election day within two hundred feet of the building wherein a polling place is located for any person to distribute any type of campaign literature or place any political posters. The poll manager shall use every reasonable means to keep the area within two hundred feet of the polling place clear of political literature and displays, and the county and municipal law-enforcement officers shall, upon request of a poll manager, remove or cause to be removed any material within two hundred feet of a polling place distributed or displayed in violation of this section.

HISTORY: 1962 Code § 23-658.2; 1968 (55) 2316.

Related Local Laws—

For a local law pertaining to the distribution of campaign literature near voting places in Greenwood County, see Local Law Index.

Cross references: As to unlawfully displaying, placing or affixing posters within right of way, see §57-25-10.

§ 7-25-190. Illegal conduct at elections generally.

Every person who shall vote at any general, special or primary election who is not entitled to vote and every person who shall by force, intimidation, deception, fraud, bribery or undue influence obtain, procure or control the vote of any voter to be cast for any candidate or measure other than as intended or desired by such voter or who shall violate any of the provisions of this Title in regard to general, special or primary elections shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in jail for not less than three months nor more than twelve months, or both, in the discretion of the court.

HISTORY: 1962 Code § 23-667; 1952 Code § 23-667; 1950 (46) 2059.

Cross references—

As to crimes and offenses, generally, see Title 16.

As to offense of betting on elections, see § 16-19-90.

As to possession of voting machine key by unauthorized person, see § 7-19-1910.

As to tampering with voting machine, see § 7-19-1920.

CASE NOTES

Activities of defendant, who induced each voter to apply for absentee ballot without regard to whether voter actually met requirements for absentee voting, who was present when each voter marked ballot and in some cases actually marked ballot himself, who also provided voters with varying quantum of advice, and who personally paid each voter and collected each absentee ballot, tainted federal election process even though intended to influence only local election, and thus fell squarely within prohibition of federal vote-buying statute. Voting Rights Act of 1965, § 11(c), 42 U.S.C.A. § 1973i(c).

United States v. Mason, 673 F. 2d 737 (1982).

To establish offense of vote-buying it is not necessary for the government to prove that vote-buying activities actually affected a federal contest, and a violation is established when the evidence shows that a defendant bought or offered to buy a vote and that such activity exposes federal aspects of a mixed state/federal election to possibility of corruption whether or not actual corruption takes place and whether or not the person the person participating had a specific intent to expose the federal action to such corruption or possibly of corruption. Voting Rights Act of 1965, § 11(c) 42 U.S. C.A. § 1973i(c)

United States v. Carmichael, 685 F.2d 903 (1982).

SPECIAL PROVISIONS AFFECTING REGISTRATION AND ELECTIONS

§ 15-1-20. Computation of time.

The time within which an act is to be done shall be computed by excluding the first day and including the last; *provided*, however, that if the last day of the period so computed is a Saturday, a Sunday, or a legal holiday, such day shall be excluded and the time period shall run until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

HISTORY: 1980 Act No. 311, eff Feb. 13, 1980.

Effect of Amendments—

The 1980 amendment inserted the proviso at the end of the section in place of the words "If the last day be Sunday it shall be excluded."

§ 57-25-10. Unlawful to display, place or affix posters within right-of-way.

It shall be unlawful for any person to display, place or affix a poster within any right-of-way and visible from the main-traveled way of the highway.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code § 33-551; 1973 (58) 247.

Cross references—

As to administrative regulations with respect to control of outdoor advertising along interstate and federal-aid primary highways, see Rules and Regulations, Highway Department.

§ 59-1-370. Closing of schools and colleges on general election day.

All State-supported colleges and universities, technical education centers and public schools shall be closed general election day in November of each even-numbered year. This day shall not be considered as one of the regular school days for the year for public schools.

HISTORY: 1962 Code § 21-19.4; 1973 (58) 640; 1977 (60) 156.

Cross references—

As to special days to be observed in schools, see §§ 53-3-10 to 53-3-60.

ALCOHOL AND ALCOHOLIC BEVERAGES

§ 61-13-380. Unlawful sales during certain days or periods; authority of Governor to proclaim such days or periods.

It shall be unlawful to sell any alcoholic liquors on Sunday, on statewide election days, or during periods proclaimed by the Governor in the interest of law and order or public morals and decorum. Full authority to proclaim such periods is hereby conferred upon the Governor in addition to all other powers in him now reposed.

HISTORY: 1962 Code § 4-102; 1952 Code § 4-102; 1945 (44) 337; 1956 (49) 1841, 1992; 1978 (61) 1514.

Cross reference—

As to general laws in regard to Sundays and holidays, see Title 53.

Research and Practice References—

45 Am Jur 2d, Intoxicating Liquors §§ 276 et seq.

48 CJS, Intoxicating Liquors § 256.

ATTORNEY GENERAL'S OPINION

This section by its express language prohibits the sale of alcoholic beverages, including "minibottles" and "packaged liquors." 1978 Op. Atty. Gen., No. 78-121, p. 154.

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