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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 19, 1998

Mr. James F. Hendrix
Executive Director
South Carolina Election Commission
P. O. Box 5987
Columbia, SC 29250

Dear Jim:

You have forwarded to me a copy of an Order of Judge Larry Patterson issued on September 30, 1996, Beane v. Charleston County Election Commission and Charleston County Republican Party. In this case Judge Patterson finds the provisions of Section 2-1-40 of the Code to be unconstitutional and overrules the 1982 case of The Charleston County Democratic Party v. The Charleston County Republican Party and The Charleston County Election Commission. You have inquired if the 1996 case overrules the 1982 case.

Section 2-1-40 of the Code created a special law which required candidates for the House to be residents of the district in which they planned to offer prior to offering for election. This law was upheld in 1982 by the Honorable John Hamilton Smith in the above-cited case. However, as the 1996 case sets out, the issue of the constitutionality of this statute was not addressed in the 1982 case. It has been the consistent opinion of this Office that a candidate must be qualified as of the time of the general election.¹ 1959-60 Att'y Gen. Ops. 159; 1964 Att'y Gen. Ops. 257; 1968 Att'y Gen. Ops. 101, 177. This is also and primarily a constitutional requirement. South Carolina Constitution, Article III, §7.

The 1996 case had a different plaintiff but identical defendants and in the 1996 case the constitutionality of the statute was directly contested and was struck as unconstitutional. Insofar as the 1996 opinion addresses whether candidates for the House must reside in the district prior to offering as a candidate, we would agree that the 1996 case overrules the prior case.

¹This would include residing in the area.

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This letter is an informal opinion and represents only the opinion of the undersigned attorney. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of formal opinions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Treva", with a large, sweeping initial stroke.

Treva G. Ashworth
Deputy Attorney General

TGA:bvc