

The State of South Carolina

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Office of the Attorney General

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August 18, 1992

R. Allen Young, Esquire
Town Attorney
Town of Mt. Pleasant
P. O. Box 745
Mt. Pleasant, SC 29465

Dear Mr. Young:

Attorney General Medlock has referred your recent letter to me for reply. You have stated that a potential candidate for a seat on the Waterworks and Sewer Commission has been found by the Mt. Pleasant Election Commission and by Judge Whetstone in an appeal of the Election Commission's decision, to be disqualified for office. You have informed this Office that the disqualification arises from this candidate not being registered in the precinct where he resides thirty days before the election. You have stated that the candidate is now pursuing a write-in campaign and have inquired if he would be disqualified from holding office if he should win as a write-in candidate.

South Carolina Code, §7-13-1120 (1976) states in part that

[n]othing 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. (Emphasis added).

See also letter to Mr. Leroy Pendleton dated September 24, 1980, which is enclosed.

A write-in candidate, therefore, must be qualified to hold office. Article VI, Section 1 of the South Carolina Constitution states in part that

[n]o person shall be popularly elected to any office in this State or its political subdivi-

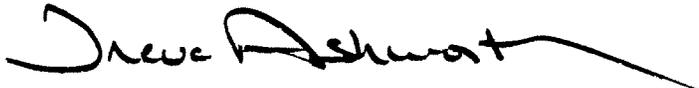
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sions unless he possesses the qualifications
of an elector.

In your letter you state that this proposed candidate has been found by both the Mt. Pleasant Election Commission and by a state court to not be a qualified elector due to his not being registered in his precinct thirty days prior to this election. A person not qualified to be placed as a candidate on a ballot would also not be qualified to be a write-in candidate for that same office.

Your next questions concern what would occur if this candidate won the election; i.e., would the candidate receiving the next highest amount of votes win, should there be a new election, could he be a candidate in a re-run election? As these questions may be hypothetical and as you needed a quick response prior to Wednesday's election regarding the first question you raised, we will defer answering these questions until and if they actually arise and we would have more time to research these questions. However, by way of general response, I would refer you to 29 C.J.S., Elections, §243 which states that the person receiving the next highest number of votes would not be declared the winner. See also letter to Honorable A. B. Setzler dated January 18, 1972, which indicates a new election would have to be held.

Sincerely,



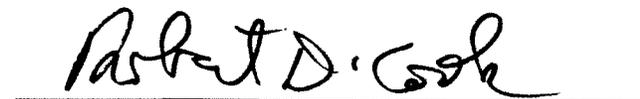
Treva G. Ashworth
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REVIEWED AND APPROVED:



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Chief Deputy Attorney General



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