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Office of the Attorney General

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April 14, 1988

Charles W. Whetstone, Jr.
Felder, Whetstone, Riesen, Gardner,
Bradley, Guerard, Ling & Gibson
Post Office Box 437
Highway 601, North
St. Matthews, South Carolina 29135

Dear Mr. Whetstone:

Your recent letter has been referred to me for reply. You have stated that you represent the Town of Cameron and that in an election scheduled for April 12, 1988, no one has filed for the Office of Mayor. You have stated that you have advised that the election should proceed in the eventuality that a write-in candidate would be elected to this office. You have stated that you have found no law on this question and inquired if we agree with your advice.

There is no specific statute that would control what occurs when no candidates file for an office. This Office and the State Election Commission have in the past taken the position that an election should be held in that a write-in vote for any candidate would elect that person to the office for which no one filed.

I have only found one case remotely on point, State ex rel Wolff v. Geurkind, 109 P 2d 1094, 133 ALR 304 (1940). In this case the party nominee died and the party declined to re-nominate another candidate. The election was held with persons voting for the deceased candidate. Following the election the election board took the position that the election was a nullity. The Court upheld the election and stated that

[t]he nomination of party candidates is a privilege and is not essential to holding an election. The selection of persons for office is not necessarily made from a list of regularly nominated candidates. The elector may vote for any person of his choice. Provision is made for writing in names, and

the person who receives the highest number of votes is elected, whether he happens to be a regular nominee or not. In this way the freest expression of choice is given to the electorate; also the election of an officer is not made dependent upon the functioning of party organizations.

Geurkind, supra, at ALR 312-313.

Section 132 of 25 Am Jur 2d Elections provides in part that

. . . the fact that one has not been nominated by primary election or other statutory method and that his name does not appear on the official ballot does not prevent voters from voting for him or invalidate the votes so cast, nor does it render him ineligible to hold office . . . The elector may vote for any person of his choice. Provision is ordinarily made by law to permit a voter to 'write in' the name of the person he desires to have elected, whether he happens to be a regular nominee or not.

Therefore, although there is no specific statutory or case law guidance on this question, it would appear that if no candidates file for an election, the election should still be held with the opportunity for a write-in vote for those offices.

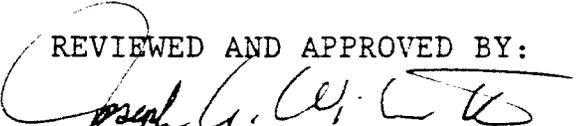
Sincerely yours,

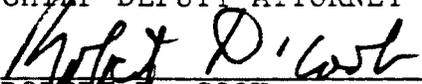


Treva G. Ashworth
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REVIEWED AND APPROVED BY:



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