

3379 Library

The State of South Carolina



Office of the Attorney General

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October 27, 1988

Joseph S. Mendelsohn, Esquire  
Post Office Box 633  
Charleston, South Carolina 29402

Dear Joe,

I am in receipt of your letter in which you have inquired at what point a manager at the polls can refuse to allow a challenge to be made of a voter. It is my understanding, following a telephone conversation that we had, that your specific question is whether or not a person can question a voter's ability to cast a ballot solely on the grounds that that voter is a student. You stated that in Charleston many Citadel students often come to the polls in their school uniform, thereby making them identifiable as students; and, their right to vote has been challenged solely on the basis that they were students. Your inquiry is if a proper challenge shouldn't be based on more than just the fact that the voter is a student.

I have not found any case law on the narrow subject of whether a voter can be challenged just on the grounds that he is a student. There has been a great deal of case law on student registration, primarily on the issue of if the student intends to reside in the community and, therefore, has established residency in the state for purposes of voting. See, Voting - Residence of Students, 44 ALR 3d 797. This Office has written previous opinions regarding residency for purposes of voting and has stated that residence is governed by whether or not the applicant intends to live in this State and the precinct in which he registers to vote. In 1971, a comprehensive opinion was written by then Assistant Attorney General Robert Brown on registration of students and what proofs of intent to reside in this State the Registration Board might look at to determine if the individual is a resident of the State and should be registered to vote. (Copy enclosed)

Joseph S. Mendelsohn, Esquire  
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Page Two

A person may only be registered to vote in this State if he meets the qualifications of a voter. South Carolina Code of Laws, 1976, Section 7-5-120; South Carolina Constitution Article 2, §4. The Registration Board sits in a quasi-judicial capacity to determine if a person meets the qualifications to be registered to vote. Their determination that a person should not be registered to vote may be appealed through the Court system. South Carolina Code of Laws, 1976, Section 7-5-230. Therefore, once the Board determines that a person should be registered as a voter, they have determined that the individual has met all the requirements to register to vote, including residency. Any subsequent challenge at the polls to a person validly registered, therefore, should be made on specific information that would establish that the person is not qualified.

Although there is no clear guidance in the State laws, it would not appear that a person should be able to challenge a voter purely on the basis that they are a student anymore than a person should be able to challenge any voter coming in on the basis of a generality. A challenge should be based on specific information regarding an individual elector. On a practical level, however, there may be little the managers of the election can do to prevent this occurring.

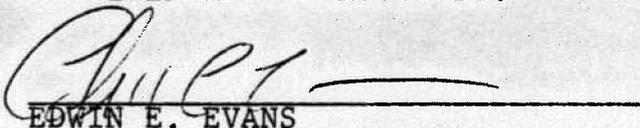
Sincerely,



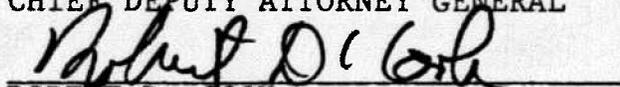
Treva G. Ashworth  
Senior Assistant Attorney General

TGA:bvc  
Enclosure

REVIEWED AND APPROVED BY:



EDWIN E. EVANS  
CHIEF DEPUTY ATTORNEY GENERAL



ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS

cc: James B. Ellisor, Executive Director  
State Election Commission