

1979 WL 42777 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 25, 1979

\*1 Ralph C. Haywood  
Chairman  
Aiken County Election Commission  
P. O. Box 239  
Aiken, SC 29801

Dear Mr. Heywood:

I am in receipt of your recent letter in which you have asked the following questions concerning the election to be held pursuant to former Governor Edwards order of January 3, 1979. You have asked the following questions:

1. The contest is only between Billie K. Trapp and L. Kline Paulk. They were the only candidates receiving votes on November 7, 1978.

Pursuant to the Executive Order, the election will be between the two (2) candidates receiving the same number of votes in the November 7, 1978, election whom I understand to be Billie K. Trapp and L. Kline Paulk.

2. The election is open to all qualified electors in Aiken County Council District 5 as of March 31, 1979.

This election was called by the Governor because the election for the Aiken County Council District 5 seat resulted in a tie vote. South Carolina Code of Laws, 1976, Section 7-13-1170 states in part that

. . . in the event such election shall result in a tie vote leaving the matter at issue undecided . . . and . . . 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 . . .

This Section, unlike Section 7-13-1140, does not limit the persons who can vote in the election to be called by the Governor. Section 7-13-1140 states that whenever there is an overvote in a polling place and a new election is called, only the persons who signed the poll list would be entitled to vote. The Legislature did not similarly limit the persons who would participate in the election called pursuant to Section 7-13-1170. Therefore, the election would be open to all qualified electors.

3. Published notice of the election (ref. [Section 7-13-35 of the South Carolina Code](#) of Laws) will be given on January 25, 1979 and February 8, 1979. The former date is more than sixty (60) days before the election, but the newspaper of greatest general circulation in the area is a weekly.

South Carolina Code of Laws, 1976, [Section 7-13-35](#) requires two notices of an election to be published before a general or special election. The first notice is to appear sixty (60) days prior to the election and the second notice two weeks thereafter. If your newspaper is not daily 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.

4. [Section 7-7-40 of the South Carolina Code](#) of Laws defined new precinct boundaries in Aiken County effective January 1, 1979. However, U.S. Justice Department approval has not been formally received, and, if it should be forthcoming between now and March 31, 1979, the Aiken County Voter Registration Board has expressed the opinion that time would be insufficient

to adjust the registration records of the area. Therefore, the election will be held under the precinct definitions in effect on December 31, 1978. Also, any new registrations or corrections in that area before March 31, 1978, will be on the basis of the precincts in effect on December 31, 1978, any U.S. Justice Department approval which may be received notwithstanding.

\*2 If the Justice Department approval does not come in sufficient time for the Registration Board to make the administrative changes necessary to amend the precincts, you could conduct the election under the existing lines. This would be especially true in Aiken's situation where this election is being called because the original election in November resulted in a tie vote; and, therefore, you are actually just rerunning the original election. Also, you have informed me that the new precinct lines would not affect the precinct lines involved in this election.

Very truly yours,

Treva G. Ashworth  
Senior Assistant Attorney General

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