

1977 WL 37177 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 4, 1977

*1 Mr. James B. Ellisor
Executive Director
State Election Commission
2301 Devine Street
P.O. Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:

You have requested an opinion from this office concerning who should have been certified as the winner in the St. Andrews Constituent School District Board election. The factual situation that exists is that Mr. Henry M. Berry wrote the Charleston County Election Commission on October 26, 1976, requesting his name not be placed on the November 2 election ballot. His name was not removed and he received more votes than his opponent Mr. Hyman Olasov. The Charleston County Election Commission certified Mr. Olasov as the winner. Subsequently, Mr. Keith Thompson, Chairman of the Charleston County Board of Trustees requested an opinion concerning the situation and an opinion was issued stating that Mr. Berry could not withdraw from the election at such a late date and; therefore, he was the winner of the election. (Letter of December 16, 1976, to Keith Thompson from Treva Ashworth) You have informed me that the only information presented to the State Board of Canvassers was that Mr. Olasov had won the election and, therefore, his name was certified as the winner of the election. Since that time the preceding factual information has been made known to you, and you have inquired who should have been certified as the winner.

As Mr. Berry could not remove his name at such a late date, S.C. Code of Laws, 1962, as amended, Section 23-400.20, and as a candidate who places second cannot be declared the winner, Mr. Berry won the election and his name should be certified as such. 63 Am Jur2d Public Officers and Employers, Section 278.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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