

1976 S.C. Op. Atty. Gen. 119 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4299, 1976 WL 22919

Office of the Attorney General

State of South Carolina

Opinion No. 4299

March 17, 1976

*1 Mr. Joseph S. Mendelsohn
Commissioners of Election for Charleston County
P. O. Box 633
Charleston, South Carolina 29402

Dear Mr. Mendelsohn:

You have requested an opinion from this Office as to whether or not spouses who enter a voting booth together pursuant to Section 5 of Act No. 301 of 1975 [59 STAT. 815 (1975)] must both be registered voters.

Section 5 of Act No. 301 provides:

Notwithstanding any other provision of law, a husband and wife may enter a voting booth together for the purpose of voting and may talk with each other while voting. [Emphasis added.]

In my opinion, the language hereinabove underscored clearly indicates that both husband and wife must be registered voters in order to enter a voting booth together pursuant to that provision inasmuch as it expressly allows them to vote together. Cf., § 23-400.56, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

You have also inquired as to whether or not a husband or wife who assists a voting spouse pursuant to § 23-400.56 of the Code can so assist irrespective of the desire of the voting spouse. Inasmuch as a spouse may so assist only if the voting spouse is either unable to read or write or is physically unable to prepare a ballot or vote or is incapacitated from preparing a ballot or voting [see, § 23-400.57, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended], and, further, inasmuch as the determination of illiteracy or incapacity is, in the final analysis, to be made by the poll managers [see, e.g., 1965-66 OPS.ATTY.GEN., No. 2041 at 119], my opinion is the desire of the voting spouse is not material, i.e., if the poll managers determine that the voting spouse is entitled to assistance, then either the non-voting spouse can assist or a bystander can be designated to assist pursuant to § 23-400.56 of the Code.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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