

1976 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4274, 1976 WL 22894

Office of the Attorney General

State of South Carolina

Opinion No. 4274

March 2, 1976

*1 The Honorable Hyman Rubin

State Senator

Box 5506

Columbia, South Carolina 29250

Dear Senator Rubin:

Your letter of February 19, 1976, requests my opinion on the following questions, each pertaining to the application of Section 33–32, Code of Laws of South Carolina, 1962:

1. The constitutionality of proxy voting under Section 33–32.

The members of the State Highway Commission are elected from districts which correspond to judicial circuits by the members of the county legislative delegations within each district. The statute provides that ‘any absentee may vote by written proxy.’

It is my opinion that this provision is unconstitutional in that it authorizes the delegation of a legislative function to a private individual. If the proxy vote is in fact delegated to a legislative member, a less conclusive opinion can be expressed but, in that event, it is my view that this procedure would most probably be unconstitutional also.

2. The constitutionality of the limitations on nominations continued in Section 33–32.

In my opinion, this provision is valid.

3. The propriety of voting in this election by General Assembly members not residents of the Fifth Judicial Circuit.

In my opinion, this procedure is valid in that all of the legislators representing the counties composing the highway district have a vote in accordance with *Fortson v. Dorsey*, wherein the United States Supreme Court held that in such cases the non-resident member represents not only the county of his residence but the district as a whole.

4. The propriety of dispensing with any requirement of Section 33–32 by unanimous consent.

This provision appears to be contained in Section 33–34 of the Code of Laws which provides that the system of rotation among the counties within a highway district may be dispensed with by unanimous consent of all of the legislative delegations from the district.

It is my opinion that this provision of law is within the powers of the General Assembly.

5. Method of adoption of rules for the conduct of the election and propriety of proxy voting upon rules.

The rule-making power is, in my opinion, a valid exercise of the statutory authority of the General Assembly. Proxy voting considerations are governed by the views set forth in the answer to question 1 above.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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