



ALAN WILSON
ATTORNEY GENERAL

August 23, 2024

Howard M. Knapp
Executive Director
South Carolina Election Commission
P.O. Box 5987
Columbia, SC 29250

Dear Director Knapp:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

The South Carolina State Election Commission (SEC) writes seeking your opinion about a voter's eligibility to vote in a primary runoff when the voter changes residence during the interval between the primary election and the runoff.

In South Carolina, poll books for a given election, including primaries, are closed thirty days before election day and for any resulting runoff:

The registration books shall be closed thirty days before each election, but only as to that election or any second race or runoff resulting from that election, and shall remain closed until the election has taken place, anything in this article to the contrary notwithstanding; provided, that the registration books shall be closed thirty days before the June primary and shall remain closed until after the second primary and shall likewise be closed thirty days before the November general election.

S.C. Code § 7-5-150.

S.C. Code § 7-5-220 requires that “[e]xcept as provided in Section 7-5-150, registration made thirty days or less before any election is not valid for that election or any second race or runoff resulting from that election but such registration shall be valid in any other election.”

Read together, the SEC interprets §§ 7-5-150 and 7-5-220 to indicate that an election, including a primary election, and any ensuing runoff should be considered one electoral event in which just one set of eligible electors may vote, those that were registered at least thirty days before the election. Therefore, in a primary election, no one who was not registered to vote at least thirty days before the primary election is eligible to vote in any runoff that may ensue, even if they registered to vote more than thirty days before that runoff. To create such a system is well within the General Assembly's powers:

The General Assembly shall provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting, establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.

S.C. Const. art. II, § 10.

In a South Carolina primary election, no candidate may be declared a nominee unless he received a majority of the votes cast for the office for which he was a candidate. S.C. Code § 7-17-600; see also S.C. Code § 7-17-610. If no primary candidate for a particular office receives a majority of the votes cast, then “[a] second primary . . . must be held two weeks after the first and is subject to the rules governing the first primary” S.C. Code § 7-13-50. The rules applying to the primary runoff will presumably include the use of the same set of closed poll books that were used for the primary election as required under Sec. 7-5-150.

Note that nothing in the law requires that a qualified elector must vote in an election or primary election in order to secure their right to vote in a corresponding runoff. This makes sense if an election and a subsequent runoff are indeed considered one electoral event with one frozen set of qualified electors. The right to vote appears to vest in the elector thirty days before an election, when it will not be certain that a runoff will even be necessary. However, consider that a qualified elector's general eligibility to vote starts at the most local level. Therefore, voter registrations are tied to their declared voting residence. S.C. Code §§ 7-5- 120(A)(3); 7-5-170(2). As noted earlier, Sec. 7-13-50 requires that, when necessary, a primary runoff will be held two weeks after a primary election and will be governed by the same rules as the election. Pursuant to Sec. 7-5-150 the poll books for the primary runoff will

be the same as those for the primary election. With this in mind, the SEC presents the following scenario and asks the Attorney General for his opinion:

A primary election is conducted that results in a primary runoff. During the two-week interval after the primary election but before the primary runoff is conducted, a person who was a qualified elector eligible to vote in the primary election contacts his county board of voter registration and elections and changes his voting residence address to a location that is within the same county but outside the district for which the primary runoff will be conducted. Will this voter still retain the right to vote in that primary runoff?

Law/Analysis

It is this Office's opinion that a person who was a qualified elector eligible to vote in a primary election but changes his residence¹ to a location within the same county and outside the district for which the primary runoff will be conducted would not be permitted to vote in the primary runoff.

In order to determine whether an elector who changes residence retains the right to vote in a primary runoff, this opinion will analyze relevant statutes in Title 7 of the South Carolian Code of Laws according to the rules of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly's intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Alternatively, "where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley Cnty., 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." Penman v. City

¹ For purposes of this opinion, we presume there is no challenge to whether the elector intended to change his residence. Residence is defined for purposes of voter registration as the person's "domicile." S.C. Code § 7-1-25(A) (2019). Domicile is further defined as "a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile." Id. The statute provides that a person has changed his domicile for voting purposes when "(1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place." S.C. Code § 7-1-25(B).

of Columbia, 387 S.C. 131, 138,691 S.E.2d 465.468 (2010); see also Op. S.C. Att’y Gen., 2000 WL 1347162 (Aug. 25, 2000) (The meaning of related statutes and their effect must be determined with reference to each other so as to “construe them together into one integrated system of law.”). With these principles in mind, this opinion will analyze relevant election statutes to ascertain legislative intent regarding whether electors who change residence between a primary election and a runoff retain their eligibility to vote in the runoff election.

It is this Office’s opinion that the SEC’s interpretation of S.C. Code §§ 7-5-150, -220, that only those electors who were registered to vote prior to thirty days before a primary election are eligible to vote in an ensuing runoff, is consistent with the plain language of those statutes. However, we find it is inaccurate to characterize registering to prior to this thirty-day period as “vesting” a right to vote in an election or runoff. First, the statute listing qualifications to register also lists reasons a person may be disqualified.

(A) Every citizen of this State and the United States who applies for registration must be registered if he meets the following qualifications:

- (1) meets the age qualification as provided in Section 4, Article II of the Constitution of this State;
- (2) is not laboring under disabilities named in the Constitution of 1895 of this State; and
- (3) is a resident in the county and in the polling precinct in which the elector offers to vote.

(B) A person is disqualified from being registered or voting if he:

- (1) is mentally incompetent as adjudicated by a court of competent jurisdiction; or
- (2) is serving a term of imprisonment resulting from a conviction of a crime; or
- (3) is convicted of a felony or offenses against the election laws, unless the disqualification has been removed by service of the sentence, including probation and parole time unless sooner pardoned.

S.C. Code § 7-5-120. After a person has been registered to vote, aside from specific statutorily defined circumstances, each elector may only “vote at the designated polling place within the precinct of his residence.” S.C. Code § 7-7-910(A). Further, section 7-5-230 states that after a person is registered, the county board of voter registration and elections (“county board”) must hold a hearing regarding challenges to an elector’s qualifications.

(A) The county boards of voter registration and elections ... shall be the judges of the legal qualifications of all applicants for registration. The board is empowered to require proof of these qualifications as it considers necessary.

Once a person is registered, challenges of the qualifications of any elector, except for challenges issued at the polls pursuant to Sections 7-13-810, 7-13-820, and 7-15-420 must be made in writing to the county board of voter registration and elections in the county of registration. The board must, within ten days following the challenge and after first giving notice to the elector and the challenger, hold a hearing, accept evidence, and rule upon whether the elector meets or fails to meet the qualifications set forth in Section 7-5-120.

(B) When a challenge is made regarding the residence or domicile of an elector, the board must consider the provisions of Section 7-1-25(D).

S.C. Code § 7-5-230 (emphasis added); see also Gantt v. Selph, 423 S.C. 333, 339, 814 S.E.2d 523, 527 (2018) (“[A]rticle II, section 9 of the South Carolina Constitution addresses a person's right to vote; subsection 7-5-230(A) prescribes a procedure for challenges to a person's qualification to register to vote ...”). The statute’s plain language states the qualifications of a registered person can be challenged if he should fail to meet those listed in section 7-5-120, including specific reference to the challenges regarding residence and domicile. It does not contain a stipulation for challenges within a certain time period before an election or runoff. In the absence of such a stipulation, it appears a county board must hold a hearing and rule on challenges within 10 days, even within the thirty-day period before an election as well as the period between an election and runoff.

In the scenario presented, the elector notifies the county board of the changed address to one that is outside of the district for the primary runoff. When an elector moves from “one precinct to another in the same county,” Section 7-7-940 of the South Carolina Code of Laws states, “[T]he elector must notify the board of voter registration and elections of the county. The board must note the fact upon the proper book and give the elector a notification of the precinct into which he is moved.” S.C. Code § 7-7-940 (emphasis added). When an elector is notified that he has been moved to a new precinct, he must not attempt to vote in the formerly assigned precinct for a district level election to which he is no longer eligible to vote as it may well be a felony. See S.C. Code § 7-25-190 (“A person who votes at any general, special, or primary election who is not entitled to vote, ... or who violates any of the provisions of this title in regard to general, special, or primary elections is guilty of a felony.”). Illegally voting at a precinct in which an elector no longer resides may not only result in consequences for the voter, but may also require that a new election be held.

For instance, in Gecy v. Bagwell, 372 S.C. 237, 241, 642 S.E.2d 569, 571 (2007), “two voters cast a ballot in a precinct where they previously were registered, but they no longer had a valid address in that precinct at the time of the election.” The Court described how allowing an elector to vote in a precinct in which he no longer resides violates the basic structure of our state election laws:

The use of precincts in our election process is a fundamental part of our statutory scheme. See S.C. Code § 7-5-110 (1976) (“No person shall be allowed to vote at any election unless he shall be registered as herein required.”) and S.C. Code § 7-5-120(A)(3) (Supp. 2005) (providing, as a qualification for registration, that the prospective voter must be a resident of both the county and the precinct in which he intends to vote); S.C. Code § 7-5-155(a)(3)(iii) (Supp. 2005) (requiring registration board to reject any voter application from which the board cannot determine the proper precinct to be assigned); S.C. Code § 7-7-940 (Supp. 2005) (voter moving to new precinct must notify the registration board in his new county so that he may be informed of his new, correct precinct); S.C. Code § 7-5-440 (Supp. 2005) (outlining specific procedures for voting by an elector who has moved to a new precinct but has not notified the county registration board); S.C. Code § 7-7-920 (1976) (in municipal elections when the councilmen are elected by an at-large vote, the electors shall vote at the voting place in the precinct within which they reside); and S.C. Code § 7-13-810 (Supp. 2005) (election protest may be based on evidence of voters who voted in a precinct other than the one in which they are entitled by law to vote).

The disregard of the election statutes requiring electors to be residents of the precincts in which they vote, as well as failing to follow the procedure outlined in S.C. Code § 7-5-440 for those voters who have moved to a new precinct, constitutes more than a mere irregularity or illegality. The precinct system is an essential element of our voting process, and the failure of the two voters to adhere to the statutory requirements for registration and voting requires their votes to be rejected. Because the rejection of these two votes results in Gecy no longer carrying a majority of the total votes cast, a new election must be held.

Gecy, 372 at 242–43, 642 S.E.2d at 571–72 (emphasis added). Based on the authorities discussed above, this Office concludes that an elector who notifies a county board of a change of residence to a location in a new precinct before the day of an election cannot vote at the prior precinct to which he was registered.

If, however, an elector moved his residence from one precinct to another within the same county and “failed to notify the county board ... of the change of address before the date of an election” the elector can choose to “correct the voting records and vote provisional ballots containing only the races for federal, statewide, countywide, and municipalwide ... at the elector's former polling place ...” S.C. Code § 7-5-440(B)(1) (emphasis added).² The highlighted language only permits voting provisional ballots for races that would not be impacted by the elector’s change of residence. When this statute is applicable, the voter would not be permitted to vote for races which are held at the district or ward level.

It is, however, possible for an elector to change residence out of the district for which a runoff is conducted but still remain registered within the same precinct. Such a circumstance is not addressed by Section 7-7-940. Section 7-5-440 provides a process in an analogous situation where an elector moves his residence from one address in a precinct to another within the same precinct, but fails to notify the county board of the change before an election. It provides:

A qualified elector who has moved from an address in a precinct to an address in the same precinct shall, notwithstanding failure to notify the county board of voter registration and elections of the change of address prior to the date of an election, be permitted to vote at that precinct's polling place upon oral or written affirmation by the qualified elector of the change of address before an election official at that polling place.

S.C. Code § 7-5-440(A) (emphasis added). In this situation, the elector would still be allowed to vote a standard ballot after affirming his new address. While the elector would still be allowed to vote in races for which he is a qualified elector, no language in this statute suggests he would be allowed to vote in races in which both he and the county board know he is not entitled to as a result of a changed residence.

It must be noted that while an elector may change his residence and no longer be qualified to vote in certain races, this does not mean that he has become ineligible to vote at all. Section 7-5-440(D) explicitly prohibits removing an elector who moves from one address to another within the same county from the list of eligible voters except in limited circumstances.

² The Legislature established an additional option for qualified electors who move to another county within the thirty-day period before an election so that they “must be permitted to correct the voting records and vote at a central location located at the main office of the county board of voter registration and elections in his new county of residence where a list of eligible voters is maintained.” S.C. Code § 7-5-440(B)(2).

For voting purposes, in the case of a change of address of a qualified elector to another address within the same county, the county board of voter registration and elections shall correct the voting registration list accordingly, and the elector's name may not be removed from the official list of eligible voters except as provided in Section 7-5-330(F).

S.C. Code § 7-5-440(D). Even when the circumstances allowing for removal are present, this program “must be completed no later than ninety days before the date of a statewide primary or general election.” S.C. Code § 7-5-330(F)(4). The removal program does not impact voters during the thirty days before statewide elections or ensuing runoffs.

Considered together, these statutes generally allow qualified electors to correct their residence information at their polling place on election day while maintaining eligibility to vote in the correct races. Their plain language does not demonstrate legislative intent to permit an elector to vote in races to which he would otherwise not be permitted to vote, whether that is a general election, primary, runoff or otherwise. To the contrary, the Legislature limited those races that an elector can vote in when they fail to notify county boards of a change of residence to a different precinct to only jurisdiction-wide races, arguably to avoid allowing votes to be cast in races to which the elector is no longer eligible to vote.

The Fourth Circuit Court of Appeals found our state statutory requirement to register to vote thirty days before an election to be constitutional and serves the purpose of preventing fraud.

The statutory requirement that, as a qualification of voting in any election, one must be duly registered on the books of registration of a State at least thirty days before that election has been held perfectly valid and constitutional. As the Court said in Marston, “. . . a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot. States have valid and sufficient interests in providing for some period of time prior to an election in order to prepare adequate voter records and protect its electoral processes from possible frauds.”

Key v. Bd. of Voter Registration of Charleston Cnty., 622 F.2d 88, 90 (4th Cir. 1980) (internal citations omitted). If the thirty-day registration requirement is intended to prepare voter records and protect the electoral process, it would be inconsistent for this Office to interpret the phrase “subject to the rules governing the first primary” in Section 7-13-50 to allow an elector to vote in a runoff election after moving his residence out of the district for said race. Such an interpretation would require county boards to employ a legal fiction to maintain the elector’s qualifications despite having notice to the contrary directly from the elector. We have previously opined that an

elector's ballot is subject to challenge if he lacks the qualifications to vote at the time the vote is cast. See Op. S.C. Att'y Gen., 2008 WL 4829830 (October 23, 2008) (finding poll managers have a duty to challenge the absentee ballot of a voter who dies prior to an election). It remains this Office's opinion that an elector must maintain his qualifications to vote at the time he casts his ballot, including in a primary runoff election.

Conclusion

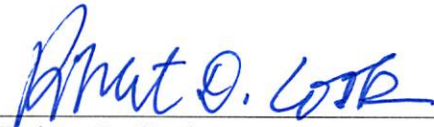
For the reasons discussed more fully above, it is this Office's opinion that a person who was a qualified elector eligible to vote in a primary election but changes his residence to a location within the same county and outside the district for which the primary runoff will be conducted would not be permitted to vote in the primary runoff. S.C. Code § 7-5-230 states that after a person is registered, the county board of voter registration and elections must hold a hearing regarding challenges to an elector's qualifications, including challenges regarding residence and domicile. We have previously opined that an elector's ballot is subject to challenge if he lacks the qualifications to vote at the time the vote is cast. See Op. S.C. Att'y Gen., 2008 WL 4829830 (October 23, 2008) (finding poll managers have a duty to challenge the absentee ballot of a voter who dies prior to an election). It remains this Office's opinion that an elector must maintain his qualifications to vote at the time he casts his ballot, including in a primary runoff election.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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