



ALAN WILSON
ATTORNEY GENERAL

November 05, 2021

Howard M. Knapp
Interim 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:

This correspondence is to serve as a request for an opinion regarding the discretionary authority of county boards of voter registration and elections ("county boards") or their respective county directors to assign special precincts and polling places for fire district commissions.

A county in the state of South Carolina has established fire district commissions to administer the fire and rescue efforts in the unincorporated areas of the county (separated into districts). It has recently come to the attention of this agency that the county board staff has established the local fire stations of the local fire districts as the precinct and polling place locations for their respective fire district commission elections. In other words, instead of going to their normal precinct/polling place to vote for fire district commissioners, voters must instead go to the fire stations administered by the very fire district commissioners that are on the ballot.

With the exception of § 7-7-910 that provides narrowly tailored reasons for moving or consolidating precincts and polling places (none of which the Commission believes apply to this situation), the Commission is not aware of anything in the S.C. Code of Laws that allows for this practice. Nevertheless, the Commission requests an opinion from your office as to whether this practice of establishing special polling places for elections for only certain offices is permitted.

Law/Analysis

It is this Office's opinion that the General Assembly did not authorize county boards of voter registration and elections ("county boards") to alter polling locations except where provided for by statute. It is this Office's long standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013); see also Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) ("[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations."). The South Carolina Code requires the State Election Commission (the "Commission"), through its executive director, to supervise the county boards' conduct of elections and voter registration for compliance state and federal law. S.C. Code § 7-3-20 (2019). Therefore, this Office will defer to the Commission's reasonable interpretations of state law regarding the conduct of elections.

Your letter states the Commission does not believe county boards have authority, generally, to designate a different polling place for fire district commission elections. Moreover, the Commission does not believe the circumstances required to designate an alternative polling place in an "emergency situation" have been satisfied. S.C. Code § 7-7-910. Because this Office cannot find facts in an opinion, for purposes of analysis, we will defer to the Commission's determination of fact in the request letter that an emergency situation is not present. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions"). Based on the authorities discussed below, this Office agrees with the Commission's position that county boards are not authorized to designate a different polling place for fire district commission elections.

The South Carolina Constitution states that the General Assembly has the power "to establish or alter the location of voting precincts in any County." S.C. Const. art. VII, § 13.¹ Chapter 7 of title 7 of the South Carolina Code governs polling precincts and voting places. Therein, section 7-7-10 states:

For the purpose of holding any general, primary, or special election in this State, the voting precincts and voting places in the several counties of the State shall be designated, fixed, and established by the General Assembly. Nothing in this chapter prohibits a county board of voter registration and elections from establishing multiple polling places within a precinct, provided that voters are

¹ The South Carolina Code defines "voting or polling precinct" to mean "an area created by the legislature for convenient localization of polling places and which administers and counts votes therein as a local unit in all elections." S.C. Code Ann. § 7-1-20(6) (Supp. 2021). Additionally, "voting place" is defined as "a place within a voting or polling precinct where ballots may be cast." Id.

assigned to these polling places alphabetically or geographically as determined by the county board of voter registration and elections and approved by a majority of that county's legislative delegation. A voter must be notified in writing of his transfer to a new polling place and the location of the new polling place.

S.C. Code Ann. § 7-7-10 (emphasis added). The General Assembly has, by and large, delegated the authority to determine polling place locations to the county boards within their respective jurisdictions. See S.C. Code Ann. § 7-7-30 et seq. However, this Office has not located authority for assigning electors to a separate precinct or polling place solely for the elections of fire district commissioners. To the contrary, the emphasized language in section 7-7-10 indicates legislative intent that the designated voting precincts and voting places would apply to elections broadly. 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.”). In fact, this Office’s August 20, 2019 opinion recognized that the Legislature provided a mechanism in S.C. Code § 7-7-1000 for consolidating precincts for municipal elections, but had “not provide[d] a similar mechanism for purposes of county and state-wide elections.” Op. S.C. Att’y Gen., 2019 WL 4127397, at 3 (August 20, 2019). The opinion found “South Carolina law does not provide local election boards with authority to consolidate precincts outside of section 7-7-1000.” Id.

As your letter notes, the South Carolina Code does, in fact, provide for relocating a designated polling place to an alternative polling place during an “emergency situation.” S.C. Code § 7-7-910. Section 7-7-910(B)(1) defines “emergency situation” to occur when “the designated polling place is not available for use as a polling place on the election day after the first notice of the election is published.” If such an emergency situation occurs, an “alternative polling place” shall be designated for the electors in that precinct for any election occurring during the emergency situation. S.C. Code § 7-7-910(B)(2). If the alternative polling place is designated more than seven days before an election, it must be approved by the majority of the legislative delegation. Id. Otherwise, if the alternative polling place is designated seven days or less before an election, the members of the legislative delegation must be notified of the alternative polling place. Id. Further, if “an alternative polling place outside of the precinct is selected,” the county board would be required to “certify in writing to the State Election Commission that no other location within the precinct is available for use as a polling place and that the selection of a polling place was made with consideration of the distance electors would have to travel to vote.” S.C. Code § 7-7-910(C). Again, your letter indicates that the Commission does not believe the requirements of these provisions have been met for the elections at issue.

Conclusion

Based on our review of the statutes governing polling precincts and polling places and giving deference to the Commission's interpretation of these statutes, it is this Office’s opinion that the General Assembly did not authorize county boards of voter registration and elections to

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alter polling locations except where provided for by statute. The language of S.C. Code § 7-7-10 indicates legislative intent that the designated voting precincts and voting places would apply to elections broadly. The South Carolina Code provides for relocating a designated polling place to an alternative polling place during an "emergency situation." S.C. Code § 7-7-910. However, because Commission indicates that the provisions for designating alternative polling places during an emergency situation are inapplicable to the present inquiry, it is this Office's opinion that a court would likely find that the county board is not authorized to designate different polling places for fire district commission elections.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General