



ALAN WILSON
ATTORNEY GENERAL

August 22, 2024

N. Daniel Gibson
Member
South Carolina House of Representatives
2607 Highway 221 South
Greenwood, South Carolina 29646

Dear Representative Gibson:

We received your letter requesting an opinion from this Office concerning the updating of voting records in the Town of McCormick after the adoption of a new redistricting map. In your letter, you state:

I have been made aware by my constituents that even though the Town of McCormick [Town] adopted a new redistricting map in December 2023, it does not appear that the voter records of Town residents were updated to reflect this new districting map.

In addition, the Town held a Town Council election on April 2, 2024. A candidate for Town Council District 4 is reported to have filed a protest of this election. This protest cited improper election boundaries. I am further informed that the Town Municipal Election Commission granted this candidate's protest, and ordered a new election be held for Town Council District 4.

A Special Election for Town Council District 4 is now scheduled for November 12, 2024. However, to the best of my knowledge, the underlying issue that caused the April 2nd election protest –and set-aside – has not been addressed. The voter records of Town residents have not been updated to reflect the new redistricting map that the Town adopted in December of 2023.

As such, you ask the following three questions:

- 1) When a municipality adopts a new redistricting map for Town Council Districts, and the Town has a Municipal Election Commission, is the Municipal Election Commission responsible for updating the voting records of Town residents to reflect the new redistricting map?
- 2) If a Municipal Election Commission is not responsible for updating the voting records to reflect the new map, then who is responsible?

- 3) When a municipality adopts a new redistricting map, does our existing state law set a deadline for updating the voting records to reflect the new redistricting map?

Law/Analysis

Section 5-15-20 of the South Carolina Code (2004) provides for the election of municipal council members and states as follows:

Each municipality in this State shall provide by ordinance for the election of its council. Councils shall select any one of the following methods of election of council:

- (1) Members of the council elected from the municipality at large.
- (2) One member elected from each ward of the municipality by the qualified electors of the ward. Candidates seeking office from a particular ward shall be residents of the ward during their entire terms of office.
- (3) Some members elected from wards as provided for in (2) and the remainder elected from the municipality at large.
- (4) Members required to be residents of particular wards but be elected from the municipality at large.
- (5) Some members may be required to be residents of particular wards and others may be residents of the municipality without regard to a particular ward and all members shall be elected from the municipality at large.

Regardless of the form adopted by the municipality, the mayor shall be elected at large.

Mayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification.

Based on your letter, we presume the Town chose to elect at least some of its council members based on wards. Section 5-15-50 of the South Carolina Code (2004) states: "Each municipal governing body may by ordinance establish municipal ward lines and the time for general and special elections within the municipality. Public notice of the elections shall be given at least sixty days prior to such elections." Thus, it is up to the Town to determine the ward lines,¹ which it

¹ Prior opinions established that although section 5-15-50 permits municipalities to establish ward lines, "boundaries of voting precincts may be changed only by the General Assembly." Op. Att'y Gen., 1987 WL 245420 (Jan. 28, 1987).

appears to have done consistent with its new redistricting map. However, you informed us that the Town's voting records do not reflect the newly drawn wards and you question who is responsible for updating the voting records to reflect the new wards, specifically referring to the Town's municipal election commission.

Section 5-15-100 of the South Carolina Code (Supp. 2023) provides the functions, powers, and duties of municipal election commissions and states:

The municipal election commission shall be vested with the functions, powers and duties of Municipal Supervisors of Registration if no such supervisors have been appointed pursuant to § 7-5-640, and shall also have the functions, powers and duties of commissioners of election, as set forth in § 7-5-10 and other provisions of Title 7. The municipal election commission shall insure proper books of registration are provided for each ward or precinct, shall prepare and distribute ballots and election materials, appoint managers of election for each polling place and otherwise supervise and conduct all municipal, special and general elections

(emphasis added). According to the emphasized language above, the Legislature placed specific responsibility on municipal election commissions to ensure proper record keeping for each ward, which we presume includes updating those records to reflect any amendments made ward lines.

Moreover, we also note section 5-15-100 states municipal election commissions are responsible for the duties of county commissioners of election as set forth in Title 7. Section 7-5-660 of the South Carolina Code (2019) under article 7 of chapter 5 of title 7, specifically pertaining to municipal elections, provides:

The Executive Director of the State Election Commission must, along with the county board of voter registration and elections in each county, prepare duplicate sets of books of registration for each ward or each precinct, showing the duly registered electors, according to the county registration books, living in each particular ward or precinct in the municipality.

According to section 5-15-100, when a municipality has a municipal election commission, the duties of county commissioners of election are devolved upon the municipal election commission. Thus, pursuant to section 7-5-660, the Town's municipal election commission along with the Executive Director of the State Election Commission, must prepare books for each ward or precinct showing which ward each elector is assigned to.²

While we believe the Town's municipal election commission is responsible for updating the voting records based on the duties assigned to it under section 5-15-100, the Legislature did not provide

² In reaching out to the State Election Commission for purposes of this opinion, it was not aware of changes to the Town's municipal wards.

a specific timeframe in which the voting records must be updated. Nonetheless, we must keep in mind that the purpose of redistricting is to comply with the one person, one vote requirement of the Equal Protection Clause. The United States Supreme Court extended this rule to local governments stating:

as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo., 397 U.S. 50, 56, 90 S. Ct. 791, 795, 25 L. Ed. 2d 45 (1970). Courts have given leeway in implementing redistricting plans recognizing

the Supreme Court has never drawn hard and fast rules about the length of terms or how long after a decennial census year new elections under the new census must be conducted. The principles of mathematical equality and majority rule are important, but we should not allow them to outweigh all other factors in reviewing the timing of elections.

French v. Boner, 963 F.2d 890, 892 (6th Cir. 1992). Thus, we will believe courts will generally give governmental bodies grace in implementing a redistricting plan, but how much time much depends on the circumstances of the implementation.

Conclusion

South Carolina law allows municipalities to elect their council members according to municipal wards. S.C. Code Ann. § 5-15-20. Section 5-15-50 of the South Carolina Code gives municipalities authority to draw their own ward lines. When a municipality has its own election commission, section 5-15-100 of the South Carolina Code imposes duties on the municipal elections commission, including the mandate to “insure proper books of registration for each ward or precinct.” Moreover, this provision places the responsibilities normally placed on county election commissions under title 7 of the South Carolina Code on municipal election commissions. Pursuant to section 7-5-660 of the South Carolina Code, county election commissions, along with the Executive Director of the State Election Commission, must maintain a set of registration books showing the registered electors living in a particular ward or precinct in the municipality. Because the Town has a municipal election commission, section 5-15-100 not only requires that it maintain proper books and records for each ward, but it must also fulfill the role of the county election commission and is responsible for the duties imposed on it in section 7-5-660. Therefore, it is our opinion that the Town’s municipal election commission is responsible for updating voting records

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to reflect which electors are assigned to each ward upon the Town's adoption of a redistricting plan.

While the Legislature does not provide a specific timeframe in which the voter information must be updated, we believe failing to update the information for purposes of elections could result in a violation of the one person, one vote provision of the Equal Protection Clause if not done within a timeframe a court considers reasonable.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General