



ALAN WILSON
ATTORNEY GENERAL

April 28, 2022

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) seeks clarification with regards to Act 117 of the 124th General Assembly (the Act or Act 117). The Act adopted the results of the 2020 Census and enacted reapportioned districts for the South Carolina House and Senate. It was signed into law and effective as of December 10, 2021.

...

With regards to districts for the House of Representatives, Section 5 of the Act states:

Section 2-1-35 of the 1976 Code is repealed, provided that until the members of the House of Representatives elected in the 2022 General Election from the districts enumerated in Section 2-1-45 qualify and take office, *the districts now provided for by law continue to apply for purposes of vacancies in office for members of the House of Representatives* (Emphasis added).

With regards to the Senate's districts, S.C. Code Ann. § 2-1-70 states "[c]ommencing with the 2012 general election, one member of the Senate must be elected from each of the following districts" and then proceeds to list the various districts. This is the law that was in effect for the last general election for senate seats held in 2020.

At Section 2 the Act amends S.C. Code § 2-1-75 stating "[c]ommencing with the 2024 General Election, one member of the Senate must be elected from each of the following districts (emphasis added)", and then proceeds to list the various districts reapportioned pursuant to the 2020 census results. This would appear to

have the effect of replacing or repealing Section 2-1-70, but Section 4 of Act 117 states that “[s]ection 2-1-70 of the 1976 Code is repealed *effective with the 2024 General Election* (emphasis added).” This would appear to leave Section 2-1-70 in effect until that time.

The next general election for senate seats will be in 2024. There is no provision in the Act like that in its Section 5 for the House districts that specifies what will happen should there be a vacancy of a Senate seat before the 2024 election.

The SEC asks these questions of the Attorney General:

1. In the event a special election must be held before the 2024 general election to fill a vacant senate seat, should such an election be held pursuant to the districts specified by S.C. Code § 2-1-70 or those as amended by the Act for Section 2-1-75?
2. Until the 2024 general elections, are sitting senators representing districts defined by S.C. Code § 2-1-70, or those as amended by the Act for Section 2-1-75?

Law/Analysis

It is this Office’s opinion that Act 117 does not repeal S.C. Code § 2-1-70 nor replace the senate election districts established therein until the 2024 General Election, and “[c]ommencing with the 2024 General Election” members will thereafter be elected from the districts articulated in S.C. Code § 2-1-75. This opinion will interpret the Act according to the rules of statutory construction to evaluate which districts sitting senators represent and whether special elections should be held pursuant to the districts specified by S.C. Code § 2-1-75 before the 2024 General Election. Statutory construction primarily requires a determination of the General Assembly’s intent. 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 legislation’s language is plain and unambiguous, “the text of [the Act] 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). Further, “[an Act] 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).

As described above in your letter, Act 117 adopted the results of the 2020 Census and reapportioned the election districts for both chambers of the General Assembly prospectively. While section 5 of the Act directly addresses which statute controls regarding vacancies in office for members of the House of Representatives prior to the first election with the new districts, sections 2 and 4 can be read to provide similar guidance indirectly. First, section 4 states, “Section 2-1-70 of the 1976 Code is repealed effective with the 2024 General Election.” (emphasis added). The title to Act 117 explains section 2-1-70 “relat[es] to election districts from which members to the Senate were formerly elected.” The general rule is that legislation is effective from the date of its passage, but there are some exceptions.

A statute takes effect from the date of its passage unless the time is fixed by a constitution or statutory provision, or is otherwise provided in the statute itself. The date of passage is the date of the completion of the last act necessary to fulfill the constitutional requirements and to give a bill the force and effect of law. ...

To avoid the hardships sometimes occasioned by the general rule, the legislature will usually designate within the act itself a future day for the act to take effect.

2 Sutherland Statutory Construction § 33:6 (7th ed.) (emphasis added). Here, the plain language of section 4 demonstrates the General Assembly intended that the Senate election districts described in Section 2-1-70 not to be repealed when the Act was adopted; rather, it intended the repeal occur with the 2024 General Election. Moreover, section 2 of the Act clarifies that the Senate Election districts established in section 2-1-75 do not “commenc[e]” until the 2024 General Election. Therefore, when sections 2 and 4 of Act 117 are read together, it is reasonable and fair to construe them to demonstrate legislative intent that sitting members of the Senate continue to represent the districts defined in S.C. Code § 2-1-70 (Supp. 2021) until the 2024 General Election. Finally, it is this Office’s opinion that a court would likely hold, if a special election is held before the 2024 General Election to fill a vacant senate seat, it must be held pursuant to the election districts specified by S.C. Code § 2-1-70.

Conclusion

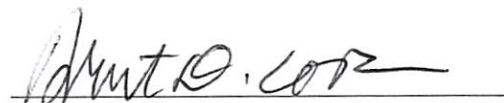
As is discussed more fully above, it is this Office’s opinion that Act 117 does not repeal S.C. Code § 2-1-70 nor replace the senate election districts established therein until the 2024 General Election, and “[c]ommencing with the 2024 General Election” members will thereafter be elected from the districts articulated in S.C. Code § 2-1-75. Prior to the 2024 General Election, if a special election is held to fill a vacant senate seat, it must be held pursuant to the election districts specified by S.C. Code § 2-1-70.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General