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HENRY McMASTER
ATTORNEY GENERAL

June 26, 2006

The Honorable Catherine C. Ceips
Member, House of Representatives
1207 Bay Street
Beaufort, South Carolina 29902

Dear Representative Ceips:

We received your letter requesting an opinion regarding the placement of numbers on official ballots in Beaufort County. Attached to your request letter, we found a copy of letter from Randolph Bates further explaining the concern over placing numbers next to a candidate's name on the ballot and whether doing so is in violation of state law. Mr. Bates also attached copies of the sample ballots from the Beaufort County 2006 primary election, as well as other sample ballots from other counties' 2006 primaries and a 2004 general election sample ballot for Beaufort County.

Based on our analysis below, we do not believe the Legislature intended to prohibit the use of candidate numbers with its enactment of the provisions in the South Carolina Election Law. In addition, although provisions in the South Carolina Election Law require ballots to conform to the forms provided for general and primary elections, we believe the inclusion of candidate numbers on ballots would not render these ballots invalid. However, a court must make the ultimate determination as to whether the inclusion of candidate numbers would render the ballots misleading and therefore, invalid under state law.

Law/Analysis

From our review of the ballots provided, it appears the numbers next to the candidates' names are "candidate numbers," which serve the purpose of identifying the candidates. Through our research, we noticed many states statutorily mandate or provide the option to include candidate numbers on ballot forms. See, eg. Ind. Code Ann. § 3-11-15-13.1 (requiring the "name of the candidate" and "[a] ballot number or other candidate designation uniquely associated with the candidate" on medium used by the voter to cast his or her ballot); La. Rev. Stat. Ann. § 18:551C ("The names of the candidates shall be numbered from first to last. Once the secretary of state has assigned numbers to the candidates on the primary election ballot, the numbers shall not be changed."); Or. Rev. Stat. § 254.145 ("On the left margin of the ballot or ballot label the name of each group or candidate may be numbered. The blank spaces shall not be numbered. A particular number shall not be used to designate more than one candidate at any election."). However, as

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explained below, South Carolina does not have statute specifically addressing the use of candidate numbers on ballots.

Chapter 13 of title 7 of the South Carolina Code, the "South Carolina Election Law" (the "Election Law"), governs the conduct of elections in South Carolina. Section 7-13-320 of the South Carolina Code (1976 & Supp. 2005) provides a list of enumerated specifications for general election ballots. With regard to the names of candidates, other than those for president, section 7-13-320(D) of the South Carolina Code (Supp. 2005) provides: "The names of candidates offering for any other office shall be placed in the proper place on the appropriate ballot, stating whether it is a state, congressional, legislative, county or other office." Furthermore, section 7-13-320(E) of the South Carolina Code (Supp. 2005) states: "The names of the several officers to be voted for and the tickets of the parties and petition candidates shall be placed on the ballots in an order as arranged by the State Election Commission as to those ballots for which it is responsible for distribution and by the commissioners of election for the respective counties as to the ballots for which they are responsible for distribution"

Section 7-13-330 of the South Carolina Code (Supp. 2005) provides the ballot format and instructions stating:

The arrangement of general election ballots containing the names of candidates for office must conform as nearly as possible to the following plan, with a column or columns added in case of nomination by petition and a blank column added for write-in votes, and must contain the specified instructions there set forth and no other:

...

Moreover, section 7-13-335 regarding the arrangement of names on certain ballots states:

The State Election Commission or the local entity responsible for printing general or special election ballots or the arrangement of a ballot by mechanical or electronic means shall conform these ballots to the requirements of § 7-13-330. The names of candidates in nonpartisan and at-large, multi-seat races must be listed in alphabetical order.

In regard to ballots used in primary elections, section 7-13-610 of the South Carolina Code (Supp. 2005) contains the specifications. Subsection (A) of this provision states, in relevant part:

The State Election Commission and the respective county election commissions shall prepare separate ballots for each political party holding a primary. The ballots for each party must contain in print

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only the names of the candidates who have filed to run in that particular party primary . . . One ballot must contain the names of all persons in alphabetical order running for state and federal offices. The other ballot must contain, in alphabetical order, the names of all persons running for the General Assembly, county offices, less than county officers, and solicitors.

Id. § 7-13-610(A). Similar to section 7-13-330, section 7-13-611 of the South Carolina Code (Supp. 2005) provides a form for official county and state primary ballots, mandating this arrangement “must conform as nearly as practicable to the following plan and contain specified instructions and no others”

The sample Beaufort County ballots provided with your request appear to be electronic voting machine ballots. Thus, we will also consider the law pertinent to voting machine ballots. In addition to section 7-13-335 stating the arrangement of the ballot by mechanical or electronic means must conform to the requirements as stated in section 7-13-330, section 7-13-1710 of the South Carolina Code (1976) gives instructions as to the arrangement of voting machine ballots.

In every county, city or town providing voting machines, the commissioners of election shall furnish to the managers of election a sufficient number of ballots printed on clear white paper, of such form and size as will fit the ballot frames of the machines, the arrangement of the names of the candidates on such ballots to be prescribed by the commissioners of election. Party nominations shall be arranged on each voting machine either in columns or horizontal rows, as shall nominations by petition, and the captions of the various ballots on such machines shall be so placed as to indicate to the voter what push knob, key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice.

S.C. Code Ann. § 7-13-1710.

Considering whether the Election Law allows the use of candidate numbers on ballots for general or primary elections, we look to the rules of statutory interpretation. “The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the Legislature . . . A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). “If a statute’s language is plain, unambiguous, and conveys a clear meaning the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Buist v. Huggins, 367 S.C. 268, ___, 625 S.E.2d 636, 640 (2006).

In our review of the statutes cited above, we did not discover any reference, either in the provisions dealing with the specifications required for ballots used in general or primary elections, or in the form ballots for those elections, to the use of candidate numbers. However, we also did not find an indication that the use of candidate numbers is prohibited. Thus, we must look beyond the wording in the statute to determine whether the Legislature intended to prohibit the use of candidate numbers.

We begin by looking at the intent of the Legislature. The South Carolina Supreme Court in considered the purpose of the statutory ballot requirements in Rawl v. McCown, 97 S.C. 1, 81 S.E. 958 (1914). Referencing the ballot requirements in place at the time the case was decided, the Court stated:

The main purpose of the statute in prescribing the size of the ballot, the kind of paper on which it shall be printed, and in prohibiting any ornament, designation, etc., was, no doubt, to preserve the secrecy of the ballot, and to prevent fraud, intimidation, and bribery. While the statute is mandatory, it should be construed reasonably; regard being had to its purpose and the mischief which it was intended to prevent.

Id. at 12, 81 S.E. at 962.

Given the purpose of these provisions as stated by the Supreme Court, we do not believe the inclusion of candidate numbers on ballots leads to a situation impairing the secrecy of the ballot, promoting fraud, or leading to an unfair election. Additionally, the fact that other states specifically require the inclusion of candidate numbers on ballots and the fact that our Legislature did not specifically prohibit their use supports our belief that the Legislature did not intend to prevent inclusion of candidate numbers on ballots.

Nevertheless, sections 7-13-330 and 7-13-611 require ballots conform “as nearly as possible” or “as nearly as practicable,” as the case may be, to the form ballots provided in these statutes. As we previously noted, these forms do not provide for the inclusion of candidate numbers. Thus, it could be inferred from a plain reading of these provisions that because the Legislature did not specifically provide for candidate numbers on these forms, the use of such numbers is impliedly excluded and would result in a variation from the mandated form. German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 607, 576 S.E.2d 150, 153 (2003) (recognizing the “canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ [holding] that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”). However, based on our analysis as follows, presuming the inclusion of candidate numbers a ballot is contrary to the forms provided, this variation does not render the ballot contrary to state law.

In George v. Municipal Election Commission of City of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999), our Supreme Court considered the purpose of election laws as a whole. The Court stated:

“Courts justly consider the main purpose of such laws, namely, the obtaining of a fair election and an honest return, as paramount in importance to the minor requirements which prescribe the formal steps to reach that end, and, in order not to defeat the general design, are frequently led to ignore such innocent irregularities of election officers as are free of fraud, and have not interfered with a full and fair expression of the voter’s choice.”

Id. at 186, 516 S.E.2d at 208 (quoting State ex rel. Parler v. Jennings, 79 S.C. 414, 419, 60 S.E. 967, 968-69 (1908)).

In a prior opinion of this Office, we considered the validity of a ballots that failed to contain a circle for straight party voting, as required by section 23-310 of the South Carolina Code, now codified as section 7-13-330. Op. S.C. Atty. Gen., November 16, 1963. Despite the inconsistency between the ballot and the form, we determined “the modification of the ballot form in this respect would be valid.” Id. Moreover, in another opinion of this Office we addressed the validity of a bond referendum ballot. Op. S.C. Atty. Gen., May 8, 2003. We determined whether the referendum would likely mislead the average voter is the primary consideration in the validity of a referendum. Id. Quoting a Massachusetts case, we stated:

the referendum “. . . must be complete enough to convey an intelligible idea of the scope and import of the proposed law. It ought not to be clouded by undue detail, nor yet so abbreviated as not to be readily comprehensible. It ought to be free from any misleading tendency, whether of amplification, of omission, or of fallacy. It must contain no partisan coloring. It must in every particular be fair to the voter to the end and that the intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot.”

Id. (quoting In re Opinion of the Justices, 171 N.E. 294, 297 (Mass. 1930)). However, we recognized this Office “cannot make factual determinations in a legal opinion” and concluded “this rule would include any factual determination as to whether the statements made leading up to a particular bond referendum were misleading.” Id. Thus, we left the ultimate determination as to whether the referendum is misleading to the courts.

Based on the plain language of sections 7-13-330 and 7-13-611 of the South Carolina Code, the Legislature clearly intended compliance with the forms presented in these sections when drafting official ballots. However, the courts and this Office recognize instances in which a deviation from

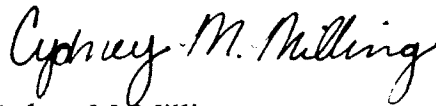
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the forms provided is justified and does not affect the validity of the ballot. Specifically, we believe when the variation does not result in a misleading ballot that unfairly impacts the election, such a variation is permitted under the law. However, the ultimate determination of whether the inclusion of candidate numbers on a ballot would render it misleading must be decided by a court, as it involves questions of fact beyond the scope of an opinion of this Office. Op. S.C. Atty. Gen., 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.").

Conclusion


We do not believe the Legislature intended to prohibit the use of candidate numbers in enacting the provisions of the Election Law describing the ballot requirements. Additionally, we believe the Legislature intended compliance with the form ballots for primary and general elections provided in the Election Law. However, should these requirements be read to exclude candidate numbers, it is our opinion that court must determine whether or not their inclusion would render the ballot misleading to the point of affecting an election for the ballots to be rendered invalid.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General