



HENRY McMASTER  
ATTORNEY GENERAL

March 20, 2006

The Honorable Thomas L. Moore  
Senator, District No. 25  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Moore:

In a letter to this office the question was raised as to the effective filing date for petition and write-in candidates for the Aiken County Board of Education ("the Board").

Several local laws and State statutes are relevant to your inquiry. In particular, Section 4 of Act No. 503 of 1982 states

Members of the County Board of Education shall be elected in elections held in each even-numbered year at the time of the general election...The laws of the general election shall apply except as otherwise specified in this section. The Aiken County Election Commission shall list as a candidate any qualified resident elector on whose behalf fifty or more electors sign a request that his name be listed...All nominating petitions must be in the hands of the chairman of the election commission by three p.m. sixty days before the date of the general election. Any person desiring to be considered as a write-in candidate for such election must file with the chairman of the election commission no later than three days prior to the election date a written notice of intent and willingness to serve if elected.... (emphasis added).

Act No. 247 of 1987, an act to establish single member election districts for the Board, in Section 2(C) states that

The Aiken County election commissioners shall conduct the election, canvass the vote and certify the results. Managers in each precinct for the general election shall serve as managers of the board of education election. The laws of the general election shall apply except as otherwise specified in this section. The Aiken County Election Commission shall list as a candidate any qualified resident elector upon

The Honorable Thomas L. Moore  
Page 2  
March 20, 2006

showing that fifty or more electors of the geographical area of the district for which an individual offers as a candidate have signed a request that his name be listed.

In addition to these local laws, general law provisions are also relevant to your inquiry. As to petition candidates generally, S.C. Code Ann. § 7-13-351, a provision of Act No. 236 of 2000, states:

Any nominee by petition for one or more of the national, state, circuit, multi-county district, countywide, or less than countywide offices, to be voted on in the general election must be placed upon the appropriate ballot by the officer, commissioners, or other authority charged by law with preparing the ballot if the petition is submitted to the officer, commissioner, or other authority, as the case may be, for general elections held under § 7-13-10, not later than twelve o'clock noon on July fifteenth or, if July fifteenth falls on Saturday or Sunday, not later than twelve o'clock noon on the following Monday.

In my opinion, the provisions of Act No. 503 of 1982 and its requirements regarding petitions being filed within sixty days of the general election and providing that write-in candidates shall file no later than three days prior to the election control. It is a rule of statutory construction that general and specific statutes should be harmonized if possible. However to the extent of any conflict between the two, the special statute usually prevails. See: Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Op. Atty. Gen. dated August 5, 1986. An opinion of this office dated August 17, 1989 referenced that "... (i)t is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both." See also: Op. Atty. Gen. dated March 6, 1990. As stated in another prior opinion of this office dated August 14, 1996, "... (p)rior special or local statutes may be repealed by implication from the enactment of a later general statute where the legislative intent to effectuate a repeal is unequivocally expressed." In my opinion, there is no expressed or implied intent to repeal the provisions of Act No. 503 of 1982 by a later general act.

Further support for the conclusion that the special provisions of Act No. 503 of 1982 control is found in the language in S.C. Code Ann. § 7-11-15 which provides generally for the filing of statements of intention of candidacies. Included in that provision is a statement indicating that

The provisions of this section do not apply to nonpartisan school trustee elections in any school district where local law provisions provide for other dates and procedures for filing statements of candidacy or petitions, and to the extent the provisions of this section and the local law provisions conflict, the local law provisions control. (emphasis added).

The Honorable Thomas L. Moore

Page 3

March 20, 2006

Both Sections 7-11-15 and 7-13-351, with the latter statute providing for the July 15 date for petition candidates, were enacted as part of Act No. 236 of 2000. Therefore, there is evidence of legislative intent that local law provisions, such as the provisions in Act No. 503 of 1982 setting a sixty day rule for petition candidates and a three day rule for write-in candidates as to nonpartisan school board elections, prevail.

Admittedly, however, this conclusion is not free from doubt. Another local act, Act No. 401 of 2002, which reapportioned election districts for the school board, contains a provision which states:

Notwithstanding any other provision of law, for the election of members of the School Board of Aiken County in 2002 only, the date for filing the nominating petitions for candidates is extended until noon September 6, 2002. (emphasis added).

Such language extending the period for filing arguably supports a conclusion that the provisions of Section 7-13-351, which established the July 15 date for petition candidates, were considered controlling, e.g., the July 15 date was being extended. Moreover, you indicated in your letter that the July 15 filing date for petition candidates was the date utilized for the last three election cycles and there have been no problems with such date. Obviously, reliance on the sixty date rule would be a change from such practice. As a result, it is my recommendation that either a declaratory judgment action be brought or that clarifying legislation be sought during the present term of the General Assembly in order to resolve the question with finality.

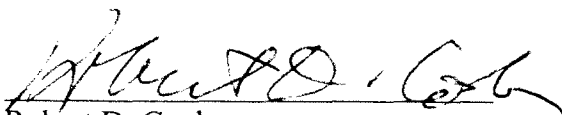
If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General