



ALAN WILSON
ATTORNEY GENERAL

January 31, 2013

Marci Andino, Executive Director
South Carolina Elections Commission
P. O. Box 5987
Columbia, South Carolina 29250

Dear Ms. Andino:

You note that "[t]he State Election Commission is in the process of implementing photo identification and needs an opinion concerning allowable forms of identification." By way of background, you state the following:

We continue to receive questions regarding what military identification cards (IDs) can be used to vote under the new rules for presenting photo ID at the polling place. The standard that SEC has been training county election officials to use to determine whether a specific ID is a federal military ID acceptable for voting is to ask three questions of the ID:

Is the ID federal? Is the ID military? And does the ID contain a photograph?

If the answer to those three questions is "yes," we are training poll managers to accept the ID as a federal military ID for voting at the polling place. We train county election officials to also err on the side of the voter if and when the answers to those questions are not clear.

This standard has worked in providing clear answers regarding most IDs, such as ID cards issued by the Department of Defense (DOD) to military retirees and ID cards issued by DOD to civilian employees and contractors. Those cards are federal, they are military (issued by DOD), and they have photographs. It also works to train poll managers that if at the polling place a voter presents an ID, and the answer to the questions are not clear, to err on the side of the voter and accept the ID as a federal military ID.

However, a county election commission recently inquired as to whether a Veterans Identification Card issued by the Department of Veteran's Affairs would qualify as a federal military ID acceptable for voting. The SEC would like to provide county election commission with guidance on this issue. The answers to

the first and third questions in our standard seem clear: the ID is federal (issued by a federal agency) and does in fact contain a photograph (see sample of the card and additional information here: <http://va.gov/healthbenefits/access/veteranidentificationcard.asp>). However, the answer to the *second* question seems to be less clear.

Is a Veterans Identification Card an acceptable form of qualifying photo ID for voting at the polling place? In addition, any additional guidance you may provide on determining whether an ID is "federal" and is "military" would be greatly appreciated.

Law/Analysis

In *State of South Carolina v. U.S. et al.*, ___ F.Supp.2d ___, 2012 WL 4814094 (D.D.C. 2012), a three judge court precleared South Carolina's new Voter ID law (R54 of 2011) pursuant to Section 5 of the Voting Rights Act (42 U.S.C. § 1973(c)(a)). Such Voter ID Act seeks to "protect against in-person voter fraud" See, *Democratic Party of Ga. v. Perdue*, 288 Ga. 720, 707 S.E.2d 67, 69 (2011). As we stated in Op. S.C. Atty. Gen., August 16, 2011 (2011 WL 3918168), Section 5 of the Act provides for the authorized forms of identification for purposes of being able to vote. We noted that

[l]ike similar provisions enacted in other states, the South Carolina legislation requires voters to produce a valid and current photo ID in order to be able to vote. The object of the requirement is to [ensure] that the person presenting himself is the elector on the poll list. Such ID required to be able to vote may be in the form either of a South Carolina driver's license; other form of identification containing a photograph issued by the Department of Motor Vehicles; a passport; *a military identification containing a photograph issued by the federal government*; or a South Carolina Voter registration card containing a photograph of the voter pursuant to Section 7-5-675. (emphasis added).

It is the meaning of this emphasized phrase about which you inquire.

Section 5 of R54 (Act 27), codified at § 7-13-710, also contains what is known as the "reasonable impediment" provision which was key to the three judge court's preclearance of the Voter ID Act. Such provision, as we concluded in our 2011 Opinion, insures "that those who are unable to obtain a Photo ID of any kind may still be able to vote." As we noted "[i]f the voter cannot produce such an ID, Subsection (D)(1)(B) of Section 5 ... provides as follows:

(b) If an elector does not produce a valid and current photograph identification because the elector *suffers from a reasonable impediment that prevents the elector from obtaining photographic identification*, he may complete an affidavit under

the penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from *a reasonable impediment that prevents him from obtaining photographic identification*. The elector shall list the impediment unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of registration and elections before certification of the election by the board of county board of canvassers.

(emphasis added).

Subsection D(2) of Section 5 further states:

(2) If the county board of registration and elections determines that the voter was challenged only for the inability to proof of identification and the required affidavit is submitted, the county board of registration and elections shall find that the provisional ballot is valid unless the board has grounds to believe the affidavit is false.

As noted, the "reasonable impediment" provision was key to the District Court's preclearance in the *South Carolina* case. As the Court stated, "[w]e have emphasized the importance of the reasonable impediment provision to our analysis of Act R54 and to our preclearance of Act R54 for future elections." *Order* at 31. Moreover, the Court emphasized in its *Order* preclearing the Act that

South Carolina's new voter ID law is significantly more friendly to voters without qualifying photo ID's than several other contemporary state laws that have passed legal muster. ... [T]he fact that South Carolina has gone to greater lengths than those other states to alleviate the burdens of voter ID laws, while not dispositive, tends to support the conclusion that South Carolina did not act with a discriminatory purpose.

Order at 30-31. As the Court recognized, "[t]he Attorney General of South Carolina and Ms. Andino have emphasized that a driving principle both at the polling place and in South Carolina state law more generally is erring in favor of the voter." *Order* at 9. The Court quoted with approval opinions of this Office, which concluded that any doubt in the interpretation of a statute should be resolved "'in favor of the people's right to vote.'" *Id.* See, *Op. S.C. Atty. Gen.*, October 11, 1996 (1996 WL 679459, at 2).

We turn now to your specific question regarding interpretation of the phrase "military identification containing a photograph issued by the federal government" as used in § 7-13-

710(A)(4) (Section 5) of the Voter ID law. In construing these words, a number of principles of statutory construction are applicable. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature. *State v. Martin*, 293 S.C. 46, 358 S.E.2d 697 (1987). In addition, a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. *Caughman v. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E. 2d 660 (1991). Furthermore, a court should not consider a particular clause or provision in a statute as being construed in isolation, but should read it in conjunction with the purpose of the statute and the policy of the law. *State v. Gordon*, 356 S.C. 143, 588 S.E.2d 105 (2003). In addition, in determining the legislative intent, a court will, if necessary, reject the literal import of the words used in a statute. It has been said that "words ought to be subservient to the intent, and not the intent to the words." *Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 816 (1942).

As stated above, Subsection (E) of Section 5 of the Voter ID Act expressly provides that "[t]he purpose of the identification required pursuant to subsection (A) is to confirm the person presenting himself to vote is the elector on the poll list." Applying these rules of interpretation, we believe a court would rely upon this legislative intent rather than the literal phraseology and would thus conclude that a Veterans Identification Card (VIC), issued by the Department of Veterans Affairs, would qualify as a "military identification containing a photograph issued by the federal government" for purposes of meeting the voting requirements of the Voter ID Act. As you note, this ID is issued by a federal agency and does in fact contain a photograph.

Moreover, in determining that this ID would be deemed a "military" ID, it is important to observe that the Voter ID statute does not prescribe that the ID be an "active" military identification. A "veteran" as that term is used in its common and ordinary usage is a person who has had military service. See, *Webster's New World Dictionary* (2d college ed.). The word "veteran" as defined by federal law is a "person who served in the active military, naval, or air service, and who was discharged and released therefrom under conditions other than dishonorable." *Op. S.C. Atty. Gen.*, November 25, 1980 (quoting 38 U.S.C.A. § 10(2)). See also *Fernandez v. Shinseki*, 2011 WL 1575091 (U.S.Ct.Vet Claims 2011). It is our understanding that other eligibility factors for a VIC include active duty service dates, deployments, or other criteria such as being discharged for medical reasons or serving in a war zone. Common sense would dictate that a person possessing a valid and current identification (VIC), issued by the Department of Veterans Affairs, possesses a federal "military" I.D. This is especially true in light of the fact that in our 2011 Opinion, concerning the Voter ID Act, we stated:

... it is well established that the right to vote is a fundamental right. As the United States Supreme Court has repeatedly emphasized, it is beyond dispute that "voting is of the most fundamental significance under our constitutional

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structure." *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Any interpretation by a court of the Voter ID Act will certainly be well cognizant of the fundamental nature of the right to vote.

We apply this governing principle here as well.

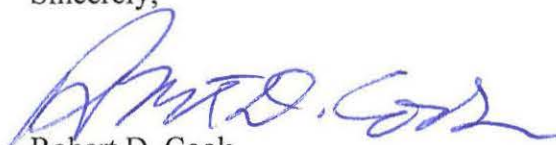
Conclusion

The Voter ID Act does not define the phrase "military identification containing a photograph issued by the federal government," which is one form of identification for voting authorized by the Act. However, based upon the foregoing, it is our opinion that a court would likely conclude that a current and valid Veterans Identification Card (VIC) is included within this phrase. Eligibility for the VIC card is based upon prior active service in the active military, naval or air service and who was discharged and released from service therefrom under conditions other than dishonorable. Moreover, § 7-13-710(A)(4) of the Voter ID Act does not specify that the military service be currently "active" service. Such a construction is consistent with our policy of erring on the side of the right to vote.

Furthermore, as the three judge court in *South Carolina* recognized, the Indiana Voter ID statute upheld by the Supreme Court in *Crawford v. Marion Co. Election Bd.*, 553 U.S. 181 (2008) accepted a VIC as a sufficient form of identification for purposes of that law.

We likewise believe that acceptance of a VIC for purposes of identification in order to vote is in accordance with the legislative intent of South Carolina's Voter ID law and meets the requirements thereof.

Sincerely,



Robert D. Cook
Deputy Attorney General

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