



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 10, 1998

Robert N. Rosen, Esquire
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Dear Robert:

As attorney for the Charleston County School District, you have asked for the advice of this Office as to several questions related to the ballot for a school bond referendum for the District. In particular you have asked whether the District has the right to "write the question" for the ballot, whether "the question is properly written and legal" and whether a handout may be used to explain the question. According to your letter, the District wants to make detailed information available to voters regarding the proposed use of the bond money, but such information will not fit on the ballot. A proposal has been made to use a ballot question that will reference a twelve page handout with a description of the projects to be funded by the bond issue.

Limited authority exists as to your questions. S.C. Code Ann. §59-71-40 (1990) provides that the commissioners of election for the county "...shall prescribe the form of the ballot...." This statute provides no express guidance as to the framing of the question nor does it address whether prescribing the form of the ballot includes writing the question. See also §7-13-400 (1976);¹ §7-13-2110 (1976).² Generally, "[a] ballot

¹ Section 7-13-400 only states that the form of the ballot involving bond or other issues "...shall be a statement of the question or questions..." followed by options as to whether the voter is in favor of or opposed to the question.

² Section 7-13-2110 provides in part as follows, for referenda related to constitutional amendments:

(continued...)

Requaint Letter

Mr. Rosen
Page 2
March 10, 1998

description must give a true and impartial statement of the purpose of the measure...." Ops. Atty. Gen. (August 30, 1996); see also Stackhouse v. Floyd, 248 S.C. 183, 149 S.E. 2d 437 (1965); Ex Parte Tipton, 229 S.C. 183, 93 S.E. 2d 640 (1956). Clearly a handout or posting are not curative of a defective question on the ballot. Tipton; Stackhouse.³ Whether the language of the question that is proposed for the ballot is legally sufficient involves the kinds of findings that are best suited to a Court or the agencies charged with such responsibilities. Such a question essentially falls outside the scope of Opinions of this Office.

This Office has previously advised that a declaratory judgment action be brought to resolve issues related to a referendum including the question on the ballot. See eg. Ops. Atty. Gen. (October 10, 1988). This approach seems best, at least, as to the issue of whether the question proposed for the ballot is properly stated. Any other questions can be addressed in such an action.⁴

²(...continued)

...when...the proposed amendment ...might not be clearly understood by the voters...a simplified...or more detailed explanation of the meaning and effect of such amendment shall be placed upon the ballot.... When mechanical devices are used, printed copies of such explanation shall be made available at each voting precinct.

The guidance, if any, provided by this statute is uncertain because it is limited to constitutional amendments.


³ A previous Opinion of this Office indicated that paper ballots should be used for constitutional questions when the amendment could not be set forth verbatim on a voting machine. Ops. Atty. Gen. (August 29, 1968). Prior opinions are presumed by the Office to be correct until shown to be clearly erroneous. Op. Atty. Gen. (September 11, 1996). Whether the reasoning of this Opinion would apply to the instant matter which does not involve a constitutional amendment need not be reached in light of the recommendations set forth herein.

⁴ Because of this recommendation, I do not reach your question as to whether the use of a particular seal on the ballot should be allowed.

Mr. Rosen
Page 3
March 10, 1998

If you have further questions, please let me know.

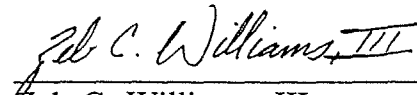
Yours very truly,



J. Emory Smith, Jr.
Assistant Deputy Attorney General

JESjr

REVIEWED AND APPROVED BY:



Zeb C. Williams, III
Deputy Attorney General