



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 23, 1995

The Honorable James A. Lander
Senator, District No. 18
601 Gressette Building
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Lander:

By your recent letter to Attorney General Condon, you have sought an opinion as to a situation existing as to appointments to be made to the Union County Board of Election and Registration. You have advised that, by Act No. 231 of 1993, the General Assembly created a nine-member Board of Election and Registration of Union County. Attempts have been made to appoint members of this board, but so far no appointments have been made because the State Election Commission has been unable to certify that at least one of the appointees represents the second largest political party as determined by the composition of Union County's delegation in the General Assembly. You advise that S.C. Code Ann. §7-5-35 is being cited as the requirement for such certification and ask whether that statute is applicable to a nine-member board.

Section 7-5-35 of the Code provides:

If a county operates its elections through an election and registration commission composed of seven members, the structure and composition are not affected or changed by the provisions of this act. However, the provisions for inclusion of majority and minority party representatives upon the commission and upon the expanded commission as constituted for primary elections and protests must be applied to the seven-member commission, *mutatis mutandis*.

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This provision was adopted as section 15 of Act No. 253 of 1992, which act made sweeping changes in the state's election laws, particularly in the conduct of primary elections. As you observe in your request letter, the Union County board was not in existence when this act, including this statute, was adopted.

In construing an act of the General Assembly, the primary objective of both the courts and this Office is to determine and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are given their plain and ordinary meanings or significance, unless something in the statute dictates a different interpretation. Martin v. Nationwide Mut. Ins. Co., 256 S.C. 577, 183 S.E.2d 451 (1971). When the terms of a statute are clear and unambiguous, there is no room for construction, and the words must be applied literally. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

Applying these rules to the issue at hand, the plain language of §7-5-35 makes the statute applicable to those combined county boards of election and registration which are comprised of seven members. The Union County board is to be comprised of nine members when the appointment process is complete. The plain and unambiguous language of §7-5-35 leaves no room for interpretation; it does not apply to the Union County Board.

There is another statute, however, which most likely does apply to the Union County board, the interpretation of which would compel the same result as to certification of members' representations of the various political parties. Section 7-13-70, as most recently amended by section 5 of Act No. 253 of 1992, provides for the appointment of county election commissions, terms of office, the appointment of poll managers, and so forth. The statute also provides:

The Governor shall notify the State Election Commission in writing of the appointments. The State Election Commission shall verify that at least one of the appointees represents the largest political party and one represents the second largest political party as determined by the composition of that county's delegation in the General Assembly or the makeup of the General Assembly as a whole if the county's delegation is composed of only one party's members.

It is observed that §7-13-70 is a law general in form, applicable state-wide. Act No. 231 of 1993, relative to Union County, would be viewed as an exception to §7-13-70 to the

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extent inconsistent with §7-13-70. To the extent that §7-13-70 covers matters not addressed by Act No. 231 of 1993, §7-13-70 would still be effective. Cf., Purdy v. Strother, 184 S.C. 210, 192 S.E. 159 (1937); Gaston v. State Hwy. Dep't of S.C., 134 S.C. 402, 132 S.E. 680 (1926)(in case of conflicting or inconsistent statutes, attempts will be made to reconcile them if at all possible to do so, to give force and effect to each).

In addition, it appears that the General Assembly has adopted a common plan or scheme to ensure that election commissions of whatever number of members, reflect representation of majority and minority political parties within a given county, based either on the composition of the county legislative delegation or the General Assembly if only one political party is represented by the composition of the county legislative delegation. Research indicates that such representation is often required by constitutional or statutory provisions as a means of ensuring honesty in the conduct of elections and to prevent fraud or improper actions by members or officers of one political party. See, as examples, 25 Am.Jur.2d Elections §42; 29 C.J.S. Elections §60; State ex rel. State Central Committee of Progressive Party v. Board of Election Com'rs of Milwaukee, 3 N.W.2d 123 (Wis. 1942). The 1992 act referred to above removed party primaries from the jurisdiction of the political parties and placed responsibility for conduct of these elections with the county election commissions; thus, representation from the various political parties on the county election commission would permit input and observation from the various political parties particularly in the conduct of primary elections. To say that this plan or scheme for representation of the various political parties would not apply to Union County would appear to erode the common plan or scheme put into place in all other counties to ensure honest elections that are free from fraud.

Based on the foregoing, I am of the opinion that while S.C. Code §7-5-35 would not be applicable to the nine-member Board of Election and Registration for Union County, nevertheless §7-13-70 would require that at least one of the appointees to that board be representative of the second largest political party as determined by the composition of the Union County Delegation in the General Assembly.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it satisfactorily responds to your inquiry and that you will advise if additional assistance or clarification should be needed.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General