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The State of South Carolina



Office of the Attorney General

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April 5, 1993

The Honorable Sandra S. Wofford
Member, House of Representatives
308-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Wofford:

You have advised that the Berkeley County Legislative Delegation is considering appointments to the Berkeley County Voter Registration and Election Commission. You had asked whether a particular individual might be considered for appointment, based on the circumstances described below.

The individual in question pleaded guilty to "official misconduct in public office," a common law offense, on May 6, 1991, in Berkeley County General Sessions Court. He was sentenced to one year imprisonment suspended upon one year's probation and 250 hours of public service, according to documents provided by the Berkeley County Clerk of Court. According to the Department of Probation, Parole, and Pardon Services, the individual's sentence has been completely served. We are also advised that the individual is a registered voter.

Article XVII, § 1 of the State Constitution provides that, "No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector[.]" See also McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947). The qualifications of an elector are specified in S.C. Code Ann. § 7-5-120 and include age, lack of disabilities as named in the Constitution, residency, and so forth. Section 7-5-120 provides several events which will cause one to become disqualified, including subsection (4)(b):

persons convicted of a felony or offenses against the election laws are disqualified from being registered or voting, unless the disqualification has been removed by service of the

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sentence, including probation and parole time unless sooner pardoned.

Section 7-5-10 requires that members of county boards of voter registration be "competent and discreet persons ... who are qualified electors of that county" Section 7-13-70 provides for appointment of county election commissioners but does not contain language similar to that quoted from § 7-5-10.

The Berkeley County voter registration office has apparently determined that the individual is a qualified elector, as he is a registered voter. Because the offense to which he pleaded guilty was a misdemeanor (see Op. Atty. Gen. No. 2340 dated November 1, 1967, copy enclosed) and was not an offense against the election laws, his voter registration would not have been revoked on that basis; even if the offense were a felony, the sentence has been completely served. As a matter of law, then, the individual would meet the requirements of Article XVII, § 1 of the State Constitution to be appointed to a public office. Whether the individual is otherwise qualified is, of course, a decision to be made by the appointing authority.

With kindest regards, I am

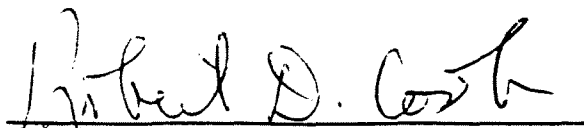
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
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