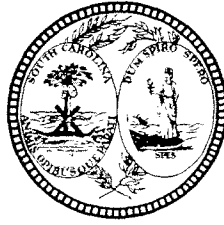


05-5832  
Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 5, 1996

Newton I. Howle, Jr., Esquire  
Darlington City Attorney  
Post Office Box 186  
Darlington, South Carolina 29532

RE: Informal Opinion

Dear Mr. Howle:

By your letter of January 16, 1996, you have sought an opinion as to the following question:

May a qualified citizen register to vote by mail no later than 30 days prior to a special election or not later than 45 days prior to it?

You advise that S.C. Code Ann. §7-5-155 (a)(1) provides a forty-five day period (subject to §7-5-150), while Executive Order 95-03, issued by the Honorable Carroll Campbell on January 9, 1995, directs that voter registration forms be developed and made available for distribution pursuant to the National Voter Registration Act of 1993 (42 U.S.C. §1973gg-6(a)(1)(A)). You further advise that the City of Darlington is working to develop voter instructions for a special municipal election that is proposed by ordinance to be held on April 16, 1996. Second reading of the ordinance is scheduled for February 6, 1996, with consideration of the resolution concerning voter instructions on that date as well.

§7-5-155

Section 7-5-155 provides for registration of voters by mail. The section provides in relevant part:

*Request: Liotto*

(a) Notwithstanding any other provisions of law, the following procedures may be used in the registration of electors in addition to the procedure otherwise provided by law.

(1) Subject to the provisions of §7-5-150, any qualified citizen may register to vote by mailing or having delivered a completed application not later than forty-five days immediately prior to any election to his registration board. ...

Section 7-5-150 provides in relevant part that:

The registration books shall be closed thirty days before each election, but only as to that election or any second race or runoff resulting from that election, and shall remain closed until such election shall have taken place, anything in this article to the contrary notwithstanding; [...] ... Such persons as shall become of age during any such period of thirty days shall be entitled to registration before the closing of the books if otherwise qualified.

42 U.S.C. §1973gg-6

A portion of the National Voter Registration Act of 1993, 42 U.S.C. §1973gg-6(a)(1)(A) provides:

**(a) In general**

In the administration of voter registration for elections for Federal office, each State shall--

(1) ensure that any eligible applicant is registered to vote in an election--

(A) in the case of registration with a motor vehicle application under section 1973gg-3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election; ...  
[.]

Newton I. Howle, Jr., Esquire  
Page 3  
February 5, 1996

The National Voter Registration Act of 1993 is an act of Congress which was enacted to promote several purposes, as stated in 42 U.S.C. §1973gg(b):

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

As a practical matter, the State of South Carolina does not maintain a separate list of persons eligible to vote for federal offices; the voter registration rolls contain the names of those eligible to vote in any election whether such be for federal, state, or local offices or referendum questions. Thus, when an individual registers to vote in this State, he will be eligible to vote in any and all elections subsequent thereto, assuming that the books have not been closed pursuant to S.C. Code Ann. §7-5-150, whether such election be federal, state, or local in nature.

Executive Order No. 95-03

In Executive Order No. 95-03, Governor Campbell acknowledged the fiscal impact which implementation of the National Voter Registration Act of 1993, as an unfunded federal mandate, will have on the State of South Carolina. In the recitals of the Order, Governor Campbell stated that "the State of South Carolina should comply with the mandates of the National Voter Registration Act as much as possible, so long as such compliance can be perfected with minimal costs to the State." The Order continued:

NOW, THEREFORE, pursuant to the powers conferred upon me by the Constitution and laws of the State of South Carolina, I hereby direct the South Carolina Election Commission to implement the following:

Promulgate a post-paid voter registration form which can be completed by the registrant in five minutes or less and returned, with the use of no additional materials, through the United States Postal Service to the South Carolina Election Commission, at no cost to the registrant.

Newton I. Howle, Jr., Esquire  
Page 4  
February 5, 1996

Produce sufficient qualities [sic] of this form and make them available for distribution to the public at the following South Carolina state government agencies:

### Litigation

As you are undoubtedly aware, the National Voter Registration Act has been the subject of litigation in the federal court of this State, as well as in other states. Ordinarily this Office does not comment upon matters in litigation; however, due to the posture of the litigation as of Monday, January 29, I would advise that the State of South Carolina has been ordered to implement the federal Act in accordance with an agreed upon timetable. The State has been given ninety days to begin implementation of the Act. It is our understanding that the State Election Commission has been printing voter registration forms allowing for the thirty-day timetable for voter registration in compliance with the federal Act, thus disregarding the forty-five day time period specified in §7-5-155. (You may wish to verify this with Jim Hendrix, Executive Director of the State Election Commission.)

Due to the fact that the State of South Carolina has been ordered to comply with the terms of the federal Act and further because there appears to be no reason why this provision of federal law could not be implemented immediately (particularly since such would be required to be implemented about two weeks following the election anyway), I am of the opinion that the federal law, rather than §7-5-155, should be followed.

### Conclusion

On the basis of the foregoing, and particularly in light of the litigation in federal court, I am of the opinion that the National Voter Registration Act has preempted the provisions of S.C. Code Ann. §7-5-155, with the effect that one may register to vote by mail up to thirty days before an election in this State.

This letter is an informal opinion only. It has been written by a designated Senior 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.

Newton I. Howle, Jr., Esquire  
Page 5  
February 5, 1996

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General

CC: Raymon E. Lark, Jr., Esquire