



Office of the Attorney General

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August 31, 1990

The Honorable Nick A. Theodore
Lieutenant Governor of the
State of South Carolina
Post Office Box 142
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Dear Lieutenant Governor Theodore:

You have advised that you are required to issue a writ of election to fill a vacancy in the Senate of South Carolina occasioned by the resignation of one of this State's Senators, pursuant to Article III, Section 25 of the State Constitution. You have questioned the timing of the election process to fill this vacancy.

Section 7-13-190 of the South Carolina Code of Laws establishes the time-table for the filling of a vacancy in elected office for which a special election is required. By an opinion of this Office dated December 2, 1986, we have previously concluded that this statute would be applicable to a special election held to fill a vacancy in the office of State Senator; a copy of the opinion is enclosed herewith. In relevant part, Section 7-13-190 (B) provides the following:

A primary must be held on the eleventh Tuesday after the vacancy occurs.... The special election must be on the eighteenth Tuesday after the vacancy occurs.... If the date for an election falls on a state holiday, it must be set for the next succeeding Tuesday.

You have advised that the eleventh Tuesday, in the instant situation, would be November 6, which is the general election day and a legal holiday, according to Section 53-5-10 of the Code. You have asked whether the primary to fill the vacancy in question could nevertheless be scheduled for November 6.

We have not located a statutory definition of the term "state holiday." Within the election laws, however, is a definition of the term "legal holiday" at Section 7-1-20(14); the term means "any holiday recognized by the State or Federal law."^{1/} The legal holidays recognized by state law are detailed in Section 53-5-10, which section states: "All general election days are legal holidays in addition to the above." Because both Sections 7-13-190 (B) and 7-1-20 (14) are within the election laws and both necessarily deal in part with the subject of holidays, these statutes must be read in pari materia and construed together if at all possible. Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928). Giving the words of each statute their plain and ordinary meanings as must be done in the absence of ambiguity, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), compels the conclusion that a primary election under Section 7-13-190 (B) may not be scheduled for a general election day, which is a recognized legal holiday of the State of South Carolina.

In so concluding, we are mindful that the ordinary meaning of the term "holiday" includes the notion that ordinary occupations are suspended on such a day, that there is a cessation of work. Lamberti v. City of Stamford, 131 Conn. 396, 40 A.2d 190 (1944). When the purpose of a holiday on the day of a general election would be to relieve many electors from work-related responsibilities so that they may exercise their right to vote, it seems highly unlikely that the General Assembly would have intended to preclude the scheduling of a special primary on a date when many citizens would already be likely to vote.^{2/} Such is probably the result of oversight in the legislative enactment. Nevertheless, regrettably, the plain language of the statute forces this conclusion.

^{1/} Days considered to be legal public holidays under federal law are outlined in 5 U.S.C. § 6103. Because Section 7-13-190 (B) mentions only "state holidays," federal law is not relevant in this instance.

^{2/} In contrast, the eighteenth Tuesday from the date of occurrence of the vacancy is December 25, Christmas; the next following Tuesday is January 1, 1991, New Year's Day. Clearly, these are the types of holidays which must have been contemplated by the legislature when Section 7-13-190 was adopted; voter turn-out on those days would obviously be virtually non-existent. Therefore, the general election would be scheduled for Tuesday, January 8, 1991.

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It must also be noted that Section 7-13-190 does not provide for discretion in setting the election dates. In the absence of such authorization, holding the election on a date other than that authorized by statute will void the election. 29 C.J.S. Elections § 77; Davis v. Page, 217 Ga. 751, 125 S.E.2d 60 (1962); Corey v. Hardison, 236 N.C. 147, 72 S.E.2d 416 (1952); McCoy v. Fisher, 136 W.Va. 447, 67 S.E.2d 543 (1951).

Based on the foregoing, it is the opinion of this Office that the primary to be held to fill the vacant Senate seat would be held on the twelfth Tuesday, or November 13, rather than on the eleventh Tuesday, or November 6, since the eleventh Tuesday would fall on a state or legal holiday. Of course, should the General Assembly see fit, the present statute may be amended to provide for this specific situation.

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

Robert D. Cook
Executive Assistant for Opinions