

The State of South Carolina



Office of the Attorney General

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June 9, 1988

The Honorable Carroll A. Campbell, Jr.
Governor of the State of
South Carolina
Post Office Box 11369
Columbia, South Carolina 29211

Dear Governor Campbell:

Referencing a vacancy on Aiken County Council, which vacancy occurred less than one hundred eighty (180) days prior to the next general election and will therefore be filled in the next general election, you have asked by what process the candidates would qualify therefor.

Section 4-9-90, Code of Laws of South Carolina (1976, as revised), provides in relevant part that "[v]acancies on the governing body [i.e., county council] shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election." As noted above, because the vacancy resulted less than one hundred eighty (180) days prior to the general election scheduled for November 8, 1988, the vacancy will be filled in the general election. This statute does not specify the timetable for qualification of candidates, however.

Section 7-13-190 of the Code provides a system for filling vacancies in office when such is accomplished by holding a special election. However, Section 7-13-190(A), by its own terms excepts from its provisions specific offices which are otherwise provided for in the Code of Laws. Because Section 4-9-90 in this case requires the vacancy to be filled in the general election, Section 7-13-190 would not apply in this case; if a special election were required, the terms of Section 7-13-190 would be applicable.

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Following the precedent set in 1986 when a vacancy similarly occurred on Aiken County Council, the Aiken County Election Commission has established a timetable for qualifying for the November 8 general election. Notice has been sent to the political parties and to Aiken County Council as to the following dates:

June 20 - filing opens;
June 30 - filing closes;
August 16 - date of primary election;
August 30 - date of run-off, if needed.

This schedule was arrived at by following the timetable in Section 7-13-190 insofar as was possible, we understand. Furthermore, because Section 7-13-350 of the Code requires candidates to be certified to the authority preparing the ballot (i.e., county election commission) by noon on September first preceding the election, this timetable permits such certification of the candidates by the statutorily required deadline. The approach of the Aiken County Election Commission appears to be reasonable and takes into account all applicable state statutes.

We further note that you, as Governor, would have authority under Section 4-11-20 and 1-3-220 of the Code to fill the vacancy temporarily, until the vacancy should be filled in the general election on November 8.

With kindest regards, I am

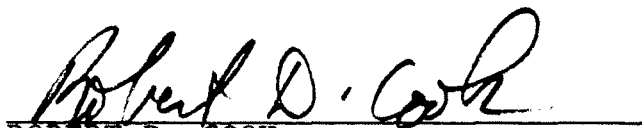
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:



ROBERT D. COOK
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cc: Robert M. Bell, Esquire
The Honorable Eugene England