1984 WL 249860 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 13, 1984

***1 SUBJECT: Elections (Voter Registration); Elections (Generally); County; Public Information; Statutes.**
There is no express prohibition under existing South Carolina law against the taking of applications for voter registration at the home; therefore, in view of the rule that all doubt must be resolved in favor of the right to vote, a court would likely conclude that 'door-to-door registration' as it is commonly thought of is not prohibited by State law, so long as the provisions of § 7-5-140 as well as all others existing requirements of law are met.

Members of the General Assembly

QUESTION:

Is door-to-door registration or the taking of applications for voter registration at the home prohibited by existing State law?

DISCUSSION:

You have asked our opinion as to the following questions: does South Carolina law prohibit door-to-door registration of voters or more specifically, the taking of applications for voter registration at one's home? Under South Carolina law, there is presently no express prohibition upon this method of registering voters. Accordingly, so long as the requirements set forth below are met, we believe a court would probably conclude that this registration method is neither unlawful nor prohibited.

In the past, this office has concluded that door-to-door registration is not authorized in this State. See, 1969 Op. Atty. Gen., No. 2692, p. 128; Op. Atty. Gen. (April 9, 1958). Previously, we have stated that § 7-5-140 of the Code of Laws of South Carolina (1976 as amended) does not allow for this method of registration. However, we have not yet attempted to determine whether this statutory provision as recently amended by Act No. 280 of 1982 still forbids door-to-door registration. Neither have we addressed the issue from the standpoint of whether this or any other provision of law prohibits merely the taking in the home of a registration application to which there is a proper attestation.

We note at the outset that cases in other jurisdictions have concluded that there must be a specific statutory provision against door-to-door registration or the taking of registration applications in the home in order for such a practice to be deemed invalid. See, Edwards v. Flint City Clerk, 9 Mich. App. 367, 156 N.W.2d 153 (1968). It is also important to recognize that the primary purpose of registration laws is to prevent the perpetration of fraud, but that such laws must also be construed liberally and favorably to the right to vote. 29 C.J.S., Elections, § 37. For, the right to vote is a fundamental constitutional right. Hunter v. Town of West Greenville, 146 S.C. 338, 144 S.E. 62 (1927); State ex rel. Edwards, 270 S.C. 87, 240 S.E.2d 647 (1978); Op. Atty. Gen., October 19, 1983. With these principles in mind, we turn to an examination of South Carolina's laws concerning voter registration.

Article II, § 8 of the South Carolina Constitution requires that the General Assembly 'provide for the registration of voters for periods not less than ten years in duration.' Section 7-5-110 of the Code states that no person be allowed to vote unless properly registered. Pursuant to § 7-5-30, county boards of registration 'shall register and conduct the registration of the electors who shall apply for registration in their respective counties as herein required.' Continuing, the provision mandates that

***2** Their office shall be at the county seat, and they shall keep a record of all their official acts and proceedings. One member of the board shall constitute a quorum for the purpose of registering or refusing to register applications for registration.

Section 7-5-120 establishes the qualifications for a person to be registered in South Carolina. Section 7-5-130 mandates that the registration books are to be open at each county courthouse (or other substituted place authorized by the governing body of the county) 'during the same hours as other county offices are normally open . . .'. Section 7-5-140 provides for the establishment of additional registration periods in the following manner:

Boards of registration shall remain open as provided by law and, in addition thereto, shall remain open and available for registration on any additional days, during such hours and at such various places throughout the county as the boards may determine. Such boards also shall remain open and available for absentee registration and absentee voting responsibilities during such additional hours as the board may deem necessary. Notice of the time and place shall be given by prior circulation in a newspaper of general circulation in the county. [emphasis added]

As is evident, § 7-5-140 authorizes local boards of registration to remain 'open and available for registration' at such various places throughout the county as the boards may determine.' No express limitation is placed upon the board's discretion in determining the particular location that registration may occur, and certainly § 7-5-140 does not expressly prohibit any form of registration, including door-to-door. The statute simply requires that the board be 'open and available for registration' in the location which the board chooses, and that adequate notice of the time and place of such location be given in a newspaper of general circulation in the county.

In construing a statute, words used should be given their plain and ordinary meaning unless there is something in the statute requiring a different interpretation. Martin v. Nationwide Mut. Ins. Co., 256 S.C. 577, 183 S.E.2d 451 (1971). The word 'open' normally connotes the meaning 'accessible'. Black's Law Dictionary, 983 (5th ed. 1979). Meanings such as "free to all, unrestricted or approachable" are quite often attributed to the word. The term 'available' possesses a similar meaning of 'accessible, obtainable, present or ready for immediate use.' Black's Law Dictionary at 123. Thus, by its own terms, § 7-5-140 appears to envision that the process commonly referred to or thought of as 'registration' may occur at whatever location within the county the local board of registration deems appropriate. The only express statutory limitations placed upon the board's discretion are first, that the registration process must be accessible or available to those who wish to take advantage of it at that particular location; [1] secondly, adequate notice must be given as to the time and place where registration is to occur. We do not view these statutory restrictions as incompatible with the door-to-door registration process so long as their terms are met, as explained more fully below. This is especially true where the statute must be given a construction favorable to the right to vote. Therefore, since the process of registration known as door-to-door is not expressly prohibited by this or any other statute, but the statutes are simply silent on the subject, we do not believe that this registration process would be held invalid by a court.

***3** Our conclusion is strengthened when we focus more closely upon the overall registration process. Traditionally, 'registration' has been commonly thought of in terms of going to a certain location and filling out a registration application. However, the completion of the application for registration is but one part of the entire registration process and is distinguishable from registration itself.

For purposes of a determination that door-to-door canvassing is not prohibited, this distinction is an important one, as is evident from a further examination of the registration statutes.

The procedure for making application for registration is set forth at § 7-5-170 of the Code. Subsection (1) requires that no registration certificate be issued 'except upon written application which shall become a part of the permanent records of the board to which it is presented and shall be open to public inspection.' Section 7-5-170(2) lists the necessary information which the application must contain. Subsection (3) states that any member of the board, deputy registrar or any registration clerk 'shall be qualified to administer oaths in connection with such application.' Subsection (4) provides as follows:

Any member of the registration board, deputy registrar or registration clerk may pass on the qualification of the prospective voter. Provided, however, in case of a question of an applicant being refused registration, at least one member of the board shall pass on the qualification of a voter. A concise statement of the reasons for such refusal shall be written on the application.

Importantly, in 1967, subsection (4) was amended to delete the previous requirement that the qualifications of the prospective voter be passed upon at the time the application is made, clearly suggesting at least as of that date that applications for registration and registration itself are considered separate processes. [2] This separation of these processes is also indicated by § 7-5-190, which provides that registration certificates may be delivered to voters 'if present at time of issue, when called for at the office, or by mail.' (Emphasis added). Significant too is the fact that nowhere in § 7-5-170, the provision which deals with the application process, is there a requirement as to any particular physical location where an application must be completed; that provision simply states that a member of the registration board, a deputy registrar or a registration clerk administer 'the oath in connection with such application.' Section 7-5-170(3); see also, § 7-5-30.

It is readily apparent from an examination of the registration procedures outlined above and set forth in Chapter 5 of Title 7, that there is a fundamental difference between the simple completion of an application for registration and registration itself. An 'application' is merely the instrument recognized by law (§ 7-5-170), which requests registration. See, 6 C.J.S., Application, pp. 99-100. 'Registration', on the other hand, is the 'recording of the fact that the individual possesses the designated qualifications of a voter.' State ex rel. Morford v. Tatnall, (Del.) 21 A.2d 185, 189 (1941). It is a quasi-judicial process where authorized election officials

***4** are required to satisfy themselves that the applicant is qualified for registration under the condition imposed by the Constitution and in proof of their satisfaction as to his qualifications as an elector they are required to give him a certificate of registration . . ..

State v. Bibbs, 192 S.C. 231, 241-242, 6 S.E.2d 276 (1939). Obviously, one is not 'registered' simply because he makes application therefor. See, §§ 7-5-30, 7-5-120, 7-5-170, 7-5-230; § 7-15-150; 1954 Op. Atty. Gen., pp. 88-89 (even though the application carries on its face all facts necessary to warrant registration, still the Board must pass upon those facts). It is only upon a determination of qualification, the subsequent issuance and delivery of the election certificate, pursuant to § 7-5-190, and the placement of the voter's name in the registration books, that the voter is deemed registered. See, State v. Board of Canvassers, 78 S.C. 461, 467, 59 S.E. 145 (1907); State v. Bibbs, supra; § 7-5-440.

With respect to so-called door-to-door or house-to-house registration, the foregoing statutory authority would of course be equally applicable. As in the case with other forms of the registration process, what occurs in door-to-door canvassing is simply the taking of the registration application, not actual registration itself. Certainly, nothing contained in § 7-5-140 either expressly or impliedly prohibits merely the taking of applications for registration in the home or any other place.

The fact that § 7-5-140 does not prohibit the taking of applications at one's home is further supported by the 1982 amendment to this provision. In § 3 of Act No. 280 of 1982, the General Assembly amended § 7-5-140 to add one sentence, dealing with absentee registration:

Such boards also shall remain open and available for absentee registration and absentee voting responsibilities during such additional hours as the board may deem necessary (emphasis added).

It is significant that this amendment used precisely the same language 'open and available for . . . registration', as that contained in the provision prior to amendment. Formerly, the provision had simply empowered boards to remain '. . . open and available for registration on any additional days, during such hours and at such various places throughout the county as the boards may determine.'

An application for absentee registration usually must be mailed to the local board by the applicant. See, § 7-15-140. Thus, in the context of absentee applications, it is evident that the General Assembly did not specify that such applications be completed at any particular place. Indeed, it was likely anticipated that most such applications would be completed at the home. Thus, use of the words 'open and available for absentee registration' in the statute appears to mean simply that the local board is to be accessible to receive the completed application; the application can then be passed upon, and if the applicant is qualified, the registration certificate can be issued and the name of the voter placed on the books.

***5** The 1982 amendment to § 7-5-140 may, we believe, be used as a guide in interpreting the provision in its entirety. § 7-5-140 was reenacted in toto at the time of amendment, using precisely the same words, 'open and available for registration', with respect to non-absentee as well as absentee registration. It is well recognized that where a former statute is amended, or a doubtful meaning of a former statute rendered certain by subsequent legislation, such amendment is strong evidence of what the legislature originally intended. 2A Sands, Sutherland on Statutory Construction, § 49.11, p. 265 (4th ed.). Applying this principle of construction, it is evident, therefore, that § 7-5-140 does not designate a particular location where an application for registration must be completed.

Moreover, it must be presumed that the Legislature was consistent in enacting § 7-5-140. Accordingly, when it has expressed its intention clearly in that part of Act No. 280 of 1982 concerning absentee registration, 'it must be assumed that it had the same intention in another part, especially where as here it used precisely the same language with respect to both. See, State ex rel. Walker v. Sawyer, 104 S.C. 342, 347, 88 S.E. 894 (1916). In this instance, there is absolutely no evidence that the Legislature intended to treat applications for absentee registration differently from other applications, for purposes of § 7-5-140, and indeed it would appear illogical to do so. In other words, we see no good reason why the Legislature would allow an applicant to complete an application for absentee registration at any physical location, and yet require all other applications to be completed in a public place. [3]

In view then of the rule that all doubt must be resolved in favor of the right to vote, we decline to give § 7-5-140 such a reading. [4] We believe that § 7-5-140 does not in any part thereof designate where an application for registration must be completed. Instead, § 7-5-140 simply requires that local registration boards be accessible to all for submission of applications for registration at those times and those places the board designates, and that adequate notice be given of those times and places. Regardless of whether we view the statute from either of the perspectives which we have outlined, that is all that the statute requires. Accordingly, we believe there is no prohibition under existing South Carolina law against the taking of applications for voter registration at the home; door-to-door 'registration', as it is commonly thought of, therefore, is not prohibited by State law, so long as the provisions of § 7-5-140 are met. [5]

We emphasize, however, that should door-to-door registration be adopted in some form, the restrictions contained in § 7-5-140, as well as all other present requirements contained in the registration laws, must be adhered to. We offer the following suggestions as a means for insuring statutory compliance.

***6** First, we note again that the registration process, in order to be 'open and available' within the statutory mandate, should be accessible to all. In short, where a board of registration designates a particular neighborhood or community for a door-to-door registration drive, it should seek to reach all unregistered voters in that designated area; and, there should probably be some mechanism to insure that those persons who wish to register, but who may not be living in the particular area where door-to-door registration is occurring, also be accommodated. One suggestion might be to have a registrar (or authorized election official) positioned at some fixed location within the designated area to take applications from those who desire to register at that location but may not be included in the door-to-door drive. It should be remembered that, based upon constitutional considerations, courts look with disfavor where the right to register at a particular place is not open to all. Devlin v. Osser, 434 Pa. 408, 254 A.2d 303 (1969).

In this same regard, we reiterate that any implementation of door-to-door registration should be uniform and even handed in its application. If local registration boards do see fit to use this means of registering voters, it should be made applicable to all

segments of the community and persons of all political beliefs and persuasions. The right to vote, of course, does not depend upon economic status or political beliefs. See, Reynolds v. Smis, 377 U.S. 533, 12 L.Ed.2d 506 (1964). County registration boards should seek as a goal to register all qualified voters in the county.

In addition, we would suggest that the notice required in § 7-5-140 be as specific and as precise as possible. It is true that nothing in § 7-5-140 precludes designating an entire neighborhood as the place for conducting the registration process on a particular day. However, we believe that in order to fully comply with the statutory requirements, registration officials should attempt to determine the location for registration activities within a neighborhood at a particular time as precisely as possible. By way of example, it might be well to give notice such as: 'registration will be conducted on the 300 block of Elm Street between 10:00 a.m. and 11:00 a.m. on the day of March 31.' Again, it may be wise to designate in the notice a particular location or fixed site within the general area to be canvassed where a registration official will be located, so that those who wish to submit an application and are not living in the particular homes which are part of the registration drive may also be accommodated. The more specific and certain the location, the more fully the spirit of § 7-5-140 is met:

We would also emphasize that, door-to-door registration, like any other form of registration, may be conducted only by persons authorized by law to register voters. Section 7-5-170 provides that only members of county registration boards, deputy registrars or registration clerks may administer 'the oath in connection with [registration] . . . applications.' Clearly, this statutory requirement must be adhered to.

***7** Our opinion herein should be deemed only as an interpretation of South Carolina law that there is presently no legal prohibition against the taking of applications for registration in the home, or door-to-door registration; in short, no South Carolina statute or case prohibits this registration practice. Since the law requires that registration laws be construed favorably to the right to vote and because door-to-door registration is not expressly prohibited, we must conclude that there currently exists no legal impediment to this practice. We emphasize, however, that any implementation of door-to-door registration would remain the decision of each local board of registration. It would of course, be within the discretion of the local registration board either to implement this practice or not implement it.

CONCLUSION:

There is no express prohibition under existing South Carolina law against the taking of applications for voter registration at the home; therefore, in view of the rule that all doubt must be resolved in favor of the right to vote, a court would likely conclude that 'door-to-door registration' as it is commonly thought of is not prohibited by State law, so long as the provisions of § 7-5-140 as well as all other existing requirements of law are met.

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Footnotes

1 Of course, here accessibility means only affording to all the opportunity to register at that location. The person seeking registration must still meet all legal requirements to be actually registered to vote.

2 Previous opinions of this office have stated that the registration application is 'an essential part of the registration process' and therefore, the application must be made in person before the local board of registration. See, Op. Atty. Gen. (July 20, 1955) and Op. Atty. Gen. (August 31, 1957). When these opinions were issued, the statutory structure regulating voter registration in South Carolina differed greatly from the present laws and was considerably more restrictive. See, Code of Laws of South Carolina, §§ 23-64, 23-68 (1952). Compare, § 3 of Act 280 of 1982.

3 Although there is no reason to distinguish applications for registration made pursuant to the absentee method from other applications for registration, still it is worthy of mention that a separate statutory authorization for absentee registration was necessary. See, Code of Laws of South Carolina, § 23-441, et seq. (1962, as amended). The existing requirement that the application be made under oath before a member of the local board, deputy registrar or registration clerk [§ 7-5-170(2)] obviously could not be adapted to absentee

registration, because these local officials possess no authority outside their own county; generally, most persons desiring to apply for registration pursuant to the absentee method would probably be located outside the particular county involved. Moreover, the General Assembly desired to limit the participants in absentee registration to certain persons. See, § 7-15-110; therefore, a specific statutory method was necessary.

4 Some legal scholars have concluded that, without affirmative forms of voter registration such as door-to-door registration, or at least permitting applications to be taken in the home, minorities' constitutional rights to vote may be violated. See, Commert, 'Access to Voter Registration', 9 Howard Civil Rights—Civil Liberties Law Review', 482 (1974). If these scholars are correct, then such would be an additional reason to construe § 7-5-140 to not prohibit the taking of applications in the home. It is well recognized that if a constitutional construction of a statute is possible, it should be followed. Casey v. South Carolina State Housing Authority, 264 S.C. 303, 215 S.E.2d 184 (1975). We would add, however, it is important that house-to-house registration, if adopted, should be even handed in its application and that such registration be made available to every segment of society and persons of all political persuasion.

5 Your question relates only to door-to-door registration as that phrase is commonly used, i.e. the taking of applications for registration at the home. We note however, that the same statutes that do not prohibit door-to-door registration also do not expressly forbid the taking of applications in a store or place of business. We assume, however, that such a practice would have to be with the specific consent of the owner or proprietor.

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