1984 WL 249946 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 26, 1984

***1** The Honorable T. Ed Garrison
State Senator
Gressette Building
Suite 412
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Garrison:
You have requested an opinion as to the constitutionality of a proposed bill 'TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10, CHAPTER 13 OF TITLE 7, SO AS TO PROVIDE SPECIAL PROVISIONS FOR NONRESIDENT LANDOWNERS TO VOTE IN BOND ISSUE REFERENDUMS.'

The bill provides that when a referendum is to be held to determine whether bonds may be issued for any purpose, a person who owns real property in the 'area involved in the proposed bond issue' who does not reside in the area may apply to the county board of registration for a registration certificate entitling him to vote in the impending bond issue referendum, Section 7-13-1050. Upon receipt of proof that the nonresident owns property in the area affected by the proposed bond issue, the county board of registration must issue a special registration certificate entitling one to vote in the impending bond issue referendum, Section 7-13-1060. The bill further provides that the nonresident property owner's ballot must be counted as one vote, 'the same as the vote of a regularly registered elector,' Section 7-13-1070.

It is my opinion that the proposed bill is most probably unconstitutional for the reasons set forth herein.

The right to vote in a bond election is not a natural, inherent, or inalienable right, but a franchise dependent on law, by which it must be conferred to permit its exercise. It is not a necessary incident of citizenship nor is it included among the rights of property or of person. Morgan v. Board of Supervisors, 67 Ariz. 133, 192 P.2d 236 (1948). The statutes governing bond elections generally provide who may vote at such elections and what the qualifications of voters shall be and vary widely in terms. Sometimes the matter is taken care of in the provisions of state [constitutional] law. See 64 Am. Jur. 2d Public Securities and Obligations, § 164.

Article II, § 4 of the South Carolina Constitution provides:
Every citizen of the United States and of this State of the age of eighteen and upwards who is properly registered shall be entitled to vote in the precinct of his residence and not elsewhere. Provided, however, that any registered elector who has moved his place of residence within the State during the thirty days immediately prior to the date of any election shall be entitled to vote in his previous precinct of residence in such election only. (emphasis added)

An elementary rule of construction is that if possible, effect should be given to every part and every word of a constitution and that no portion of the fundamental law should be treated as superfluous. . . . 16 Am. Jur. 2d Constitutional Law, § 101 p. 440, Halle v. Einstein, 34 Fla. 589, 16 So. 554 (1984).

Giving effect to every part and word of Article II, § 4 of the Constitution leads to the conclusion that one registered and qualified to vote must do so in the precinct of his residence only, irrespective of the fact that he may own property elsewhere.

***2** The presumption is in general that provisions of state constitutions are self executing. 11 Am. Jur. Constitutional Law, § 72 p. 689; 16 C.J.S. Constitutional Law, § 48; Southeastern Pipe Line Co. v. Garrett, 192 Ga. 817, 16 S.E.2d 753 (1941).

The reason for involving this presumption is set forth in Rose v. State, 105 P.2d 302, affirmed on rehearing 19 Cal.2d 713, 123 P.2d 505 (1940):

The general presumption of law is that all constitutional provisions are self executing, and are to be interpreted as such, rather than requiring further legislation, for the reason that, unless such were done, it would be in the power of the legislature to practically nullify a fundamental of legislation. 105 P.2d 308.

However, no question remains as to whether Article II, § 4 is self executing because the South Carolina Legislature has statutorily enacted the Article II, § 4 requirement that one must be a resident of the precinct in which he offers to vote. [1] Section 7-5-120 of the Code of Laws of South Carolina, 1976, as amended, provides:

Every citizen of this State and the United States who:

. . .. 3. is a resident in the county and in the precinct in which the elector offers to vote; . . ..

Shall be registered. . . . [2]

Thus, the plain language of Art. II, § 4 of the Constitution and Section 7-5-120 of the South Carolina Code leads to the conclusion that one otherwise qualified to vote may vote only in the precinct of his residence and not elsewhere regardless of where he owns property.

It further appears that if a bond election were held in a special purpose district, all registered voters of the district could participate in the election. However, if the boundary line of the special purpose district cut across one or more precinct lines, the proposed bill provides that only those precinct residents outside the borders of the special purpose district who own property within the district could vote in the bond election. Other precinct residents who might rent or lease property within the special purpose district, could not vote although otherwise qualified. Such a result might be violative of Article I, § 5 and Article II, § 3 of the State Constitution.

Article I, § 5 provides:

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.

Article II, § 3 provides:

Every citizen possessing the qualifications required by the Constitution and not laboring under the disabilities named in or authorized by it shall be an elector.

An elector as defined by Blacks Law Dictionary is ‘one who elects or has the right of choice, or has the rights to vote for any functionary, or for the adoption of any measure.’ (Emphasis added)

In Cothran v. West Dunklin Public School District, 189 S.C. 85, 200 S.E. 95 (1938) the Supreme Court in construing these sections (formerly Article II, § 3 and Article I, § 10) held that a statute which limited the right to vote at an election for school bonds in Greenville County to qualified electors who had returned real or personal property for taxation violated these sections defining an elector and regulating the exercise of the right of suffrage.

***3** The Court in Cothran, supra, said:
. . . an election is free and equal within the meaning of the Constitution when it is public and open to all qualified electors alike; when every voter has the same right as any other voter . . . when the regulation of the right to exercise the franchise does not deny the franchise itself or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.

In light of these established principles of law, we are convinced that the provisions of the Act of 1933, supra, which limits the right of voting at an election in Greenville County, to determine whether a school district shall issue bonds, to the qualified electors who have returned real or personal property for taxation, violates the provisions of the Constitution which regulate the exercise of the right of suffrage, and takes from the qualified voter who does not return real or personal property for taxation the rights guaranteed by the Constitution, and makes the Act unconstitutional. 189 S.C. at 90, 91.

The State Supreme Court has also held that Article II, § 3 would prohibit the disqualification of potential grand jurors because they are not freeholders and taxpayers. State v. Williams, 35 S.C. 344, 14 S.E. 819 (1892).

Therefore assuming that the Article II, § 4 problem could be resolved by appropriate constitutional and statutory amendments, the proposed legislation might still be violative of Article I, § 5 and Article II, § 3 of the State Constitution in as much as it would allow those nonresidents of a special purpose district to be electors in a bond election based on their property ownership while denying the right to vote to others because of their lack of property ownership.

The equal protection clause of the Fourteenth Amendment may also be violated by this bill because it conditions entitlement of nonresidents to vote in bond elections on property ownership. [3]

In Kramer v. Union Free School District No. 15, 395 U.S. 621, 23 L.Ed.2d 583, 89 S.Ct. 1886 (1969) the Supreme Court held that in an election of general interest, restrictions on the franchise other than residence, age, and citizenship must promote a compelling state interest in order to survive constitutional attack. In Cipriano v. City of Houma, et al., 395 U.S. 701, 23 L.Ed.2d 647, 89 S.Ct. 1897 (1969) the Court struck down a Louisiana statute limiting the franchise in local revenue bond elections to the 'property taxpayers' of the district noting that non-property owners as well as property owners are affected by the issuance of revenue bonds to finance municipal utilities as indicated by the utility rates they would be required to pay. [4]

As to municipal bond elections, the Court declared unconstitutional in Hill v. Stone, 421 U.S. 289, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975) a Texas statute allowing only those otherwise qualified voters who had registered taxable property to vote in municipal bond elections saying: [5]
***4** In sum the Texas rendering requirement erects a classification that impermissibly disfranchises persons otherwise qualified to vote solely because they have not rendered some property for taxation. Hill, supra, 44 L.Ed.2d at 181.

Thus under Hill, supra, any distinction between South Carolina residents, otherwise eligible to vote, based solely on property ownership would appear to be impermissible.

Accordingly, the Fourth Circuit Court of Appeals held South Carolina's annexation statute that created a property based classification system invalid in Hayward v. Clay, 573 F.2d 187, (4th Cir. 1978), cert. denied, 439 U.S. 959 (1970) saying:
We agree with the district court that the county has not demonstrated that there are any differences in the impact of annexation on freeholders and non-freeholders which amount to a compelling state interest justifying an inequality in the franchise. The chief difference is the immediate the direct burden of property taxes. But the Supreme Court has held that this is an insufficient basis for restricting the franchise to property owners. . . . Hayward, supra, 573 F.2d at 190.

In light of the decisions discussed herein, one would be hard pressed to demonstrate a compelling state interest which would justify granting the franchise to nonresident property owners of the affected areas while denying it to others solely because they own no property. [6]

It is therefore my opinion that a court would most probably find this proposed bill unconstitutional for one or all of the reasons set forth herein. I also advise that any attempt to amend existing state law to embody a property based classification system in bond elections would also be of doubtful validity in light of the U. S. Supreme Court decisions discussed herein.
Very truly yours,

Joseph A. Wilson, II
Chief Deputy Attorney General

Footnotes

1 Section 7-5-120 of the Code also requires that one must be: (1) at least eighteen years of age, (2) not laboring under disabilities named in the State Constitution of 1895, (3) can read and write any section of the Constitution submitted to the elector by registration officer, or (4) is otherwise qualified and (5) shall apply for registration.

2 Section 7-1-40 of the Code makes Section 7-5-120 and the remainder of the general election law applicable to all elections 'including elections for the issuance of bonds.'

3 The privileges and immunities clause of the South Carolina Constitution, Art. I, § 3 also prohibits the denial of equal protection of the laws to any citizen.

4 The Supreme Court extended the holding of Cipriano, supra, to general obligation bonds in City of Phoenix v. Kolodziejski, 399 U.S. 204, 26 L.Ed.2d 523, 90 S.Ct. 1990 (1970) holding the differences between the interests of property owners and non-property owners are not sufficiently substantial to justify excluding the latter from the franchise.

5 The Supreme Court has said that a state may in some limited circumstances limit the franchise to those primarily interested in an election as in Salyer Land Co. v. Tulare Water District, 410 U.S. 719, 35 L.Ed.2d 659, 93 S.Ct. 1224 (1973) where a water district created for the purpose of acquiring, storing, and distributing water for agricultural purposes was held to be constitutionally allowed to have a board of directors selected in an election in which votes were allocated according to the assessed value of each voter's land. The court held that because of its 'special limited purpose and the disproportionate effect of its activities on landowners as a group' the water district was of sufficient 'special interest' to a single group that the franchise could constitutionally be denied to others.

6 See Op. Atty. Gen. dated June 17, 1977 advising that it would probably be unconstitutional to require local planning commission members to be property owners as a condition of appointment.

1984 WL 249946 (S.C.A.G.)

End of Document