1984 WL 249973 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 31, 1984

***1** James B. Ellisor
Executive Director
State Election Commission
2221 Devine Street
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:
You have inquired as to whether or not there is any prohibition against the registration of voters in churches. We have extensively researched the question, but find there simply is no clear answer to it. No court decision that we have reviewed has definitively resolved the issues you have raised here.

On the one hand, there is not any statute which expressly prohibits registration in churches or on church property. Compare, Edwards v. Flint City, 9 Mich.App. 367, 156 N.W.2d 153, 154 (1968) [absent express statutory prohibition, certain forms of registration are not illegal]. On the other hand, however, constitutional prohibitions may be implicated. See, Lemon v. Kurzman, 403 U.S. 602, 625 (1971). Of concern are questions of church and state relations, especially where the state might register voters in close proximity to church services. See, Thomas v. Schmidt, 397 F.Supp. 203 (D.R.I. 1975) aff'd., 539 F.2d 701 (1st Cir. 1976). Unlike voting in churches or on church property, which usually is completely divorced from church services because it traditionally occurs in South Carolina during the week, registration may well take place in association with the church service itself; thus, a court might view the two processes differently. See, Berman v. Bd. of Elections, 19 N.Y. 744, 226 N.E.2d 177 (1967) [New York Court of Appeals held that voting in a church does not violate plaintiff's First Amendment rights, but Court did not expressly address the question of registration in a church, although the issue was raised.]. See also, Berman v. Bd. of Elections, 49 Misc.2d 713, 268 N.Y.S.2d 125, 126 (1966); Berman v. Bd. of Elections, 420 F.2d 684, 686 (2d Cir. 1969). As the United States Supreme Court commented only recently in the Nativity Scene case, where there are involved such questions of church and state:
In each case, the inquiry calls for line drawing; no fixed per se rule can be framed. The Establishment Clause like the Due Process Clauses is not a precise, detailed provision in a legal code capable of ready application. . .. The line between permissible relationships and those barred by the Clause can no more be straight and unwavering than due process can be defined in a single stroke or phrase or test. The Clause erects a 'blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.'

Lynch v. Donnelly, 52 U.S.L.W. 4317, 4320 (March 5, 1984).

In other words, the question you raise involves consequences of the most fundamental nature. Here the right to vote is in competition with the First Amendment Establishment Clause. In matters of this import, it would be inadvisable for an office which does not possession full judicial authority to undertake the task of adjudicating and resolving these constitutional issues, especially where the courts have not, yet, to our knowledge, done so. There is, to our knowledge, no clear constitutional precedent to guide.

***2** This same question came before Attorney General Dan McLeod on August 6, 1982 and his opinion does not directly respond to the question asked. He recommended at that time that the courts of this State resolve the matter and we agree. Accordingly, to be ultimately and satisfactorily resolved, this matter must be adjudicated in a Court of law.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

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