

1983 WL 182032 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 19, 1983

\*1 The Honorable McKinley Washington, Jr.  
Member  
House of Representatives  
Box 7  
Edisto Island, South Carolina 29438

Dear Representative Washington:

You have asked whether it is unlawful to register voters in South Carolina on Sunday. I would advise that we can find no statutory prohibition upon Sunday registration. Thus, such registration does not appear to be unlawful. In addition, I would also advise that under the existing South Carolina case law, those votes cast in an election by voters who are registered on Sunday are deemed valid.

The registration of voters is dependent upon and controlled by constitutional and statutory provisions. 29 C.J.S., Elections, § 37. Every part of a registration act must be construed to give electors 'the fullest opportunity to vote that is consistent with reasonable precautions against fraud.' Supra. Accordingly, laws relating to registration 'should be construed liberally and favorably to the right to vote.' Supra.

[Section 7-5-140 of the Code of Laws of South Carolina](#) (1976 as amended) provides:

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. Notice of the time and place shall be given by prior publication in a newspaper of general circulation in the county. (emphasis added)

It is apparent that [§ 7-5-140](#) itself in no way prohibits Sunday registration. Indeed, the statute specifies that registration may occur on 'any additional day[ ]' specified by the board of registration. Since the word 'any' generally means 'every' or 'all', (3A Words and Phrases, 'Any'), it is apparent that [§ 7-5-140](#) did not intend to limit registration to the other six days of the week, excluding Sunday.<sup>1</sup> Moreover, we can find no other statutory prohibitions upon the registration of voters on Sunday in this State.

It is further well recognized that, in the absence of a constitutional or statutory provision . . . acts and proceedings of an executive, administrative, or legislative character may be performed or conducted on Sunday or holidays.

73 Am.Jur.2d, Sundays and Holidays, § 122. Moreover, the statutory prohibitions of labor or common labor on Sunday 'have no application to the acts of public officers in the performance of their official duties.' 83 C.J.S., Sunday, § 55, p. 881. Such Sunday laws have been deemed inapplicable to election matters. 73 Am.Jur.2d, supra.

More specifically, ' . . . there is nothing unlawful in the registration of voters' names on a Sunday. 83 C.J.S., supra. And such Sunday registration has been declared by our courts to be not prohibited in this State. In State ex rel. Stock v. Schnierle, 5 Rich. (S.C.L.) 299 (1852), an election for mayor was contested in a quo warranto proceeding on the basis that thirty-one of the votes

cast for the apparent winner of the election were registered on Sunday. It was, therefore contended that those votes were void and the winner of the election was improperly holding office.

\*2 The South Carolina Court rejected the argument. The matter was first heard on motion before a single appeals court judge and then before the full court. At the motion hearing, Judge O'Neill candidly expressed his personal belief that Sunday registration should not occur, especially in view of the existence of a city ordinance 'shutting up all places of business on that day.' 5 Rich., supra, at 301. Clearly however, he separated his personal beliefs from the law on the matter because he concluded: But I am bound to say, that there is no provision in the registry law, or in any general law of this State, which declares such an act as that of registering a voter's name void. (emphasis added).

Supra.

On appeal, the very same issue of the alleged illegality of the votes (which would render them void) was raised before the full court. However, the Court upheld the validity of the practice of registering voters on Sunday, as well as the validity of those votes cast which had been registered on that day. The Court in essence therefore adopted a rule that, in the absence of a statute expressly prohibiting Sunday registration, such registration is valid. This holding is thus consistent with the general authority cited above. And since we can now find no express authority prohibiting Sunday registration, under the Schnierle holding, such registration today appears valid.

Moreover, the Court's conclusion and holding in Schnierle is not inconsistent with the common law rule, dies non juridicus, ('not a court day' Black's Law Dictionary, 5th ed.) a rule which declares that judicial Proceedings conducted on Sunday are void. Such a rule had already been recognized by our courts in Shaw v. McCombs, 2 Bay (2 S.C.L.) 232 (1799), prior to the Schnierle case being decided. Therefore, even though other courts have extended the common law rule to quasi-judicial acts, 73 Am.Jur.2d, supra at § 123, and the act of registering voters is considered quasi-judicial in nature, State v. Bibbs, 192 S.C. 231, 6 S.E.2d 276 (1940), it is evident that in Schnierle our court did not apply, the common law rule to voter registration.<sup>2</sup> The Court's conclusion in Schnierle is thus consistent with that of other courts which hold that 'Sunday prohibitions of the common law reached only the courts . . .' and that even quasi-judicial or judicial acts performed by administrative officers are not subject to the rule. Jemison v. Howell, (Ala.), 161 So. 806 (1935). See also, School Dist. of Millcreek Tp. v. Com. H. Rel. Comm., (Pa. 387 A.2d 172 (1978)).

Therefore, while the question is a close one in view of the common law rule regarding Sundays,<sup>3</sup> we nevertheless conclude that, consistent with the idea that the right to vote in South Carolina is fundamental, see, State ex rel. Edwards v. Abrams, 270 S.C. 87, 91, 240 S.E.2d 643, (1978), it is not unlawful nor does it invalidate the vote, to register voters on Sunday.<sup>4</sup>

Sincerely yours,

\*3 T. Travis Medlock  
Attorney General

#### Footnotes

1 A strong argument can be made, based upon the history of §§ 7-5-130 and 140, that the legislative intent actually was to authorize Sunday registration under certain circumstances. Originally, § 7-5-130 (§ 23-63 of 1962 Code) expressly prohibited Sunday registration at the courthouse. At the same time, however, § 7-5-140 (§ 23-65.1 of the 1962 Code) permitted additional registration 'on any additional days . . .' as determined by the local board of registration. Consistent with the idea that prohibition of Sunday registration need be express, the General Assembly chose specifically to forbid such registration at the courthouse, while using a term having no limitation ('any') with respect to additional registration. Clearly, the express mention of Sunday prohibition in one provision and its exclusion in another would imply that such registration is permitted in the latter circumstance. See, Sutherland, Statutory Construction, § 47.23. The Code provisions must be construed together and in harmony with one another.

In addition, we would note that in 1967, the express prohibition upon Sunday registration, contained in § 7-5-130 was removed and replaced with this less precise language: '[t]he books of registration shall be open . . . during the same hours as other county offices are normally open.' Again, § 7-5-140, permitting additional registration on 'any' day remained in substance unchanged.

2 We can find no South Carolina case which holds that quasi-judicial acts performed on Sunday are void.

3 Because the question is a close one, we would suggest that as a matter of clarification, the General Assembly might consider express statutory authorization of Sunday registration.

4 This conclusion is not inconsistent with the opinion issued by this office on August 6, 1982. In a letter of that date, this office recognized that there was no statute prohibiting Sunday registration; in addition, it was pointed out that the 'better procedure' would be not to register voters on Sunday. The letter freely recognized however that even such a suggestion was 'not free from doubt.' Moreover, upon closer examination of the Schnierle case we now conclude that case supports the idea that such a procedure is valid. This is made more evident by the C.J.S. citation of Schnierle for that very proposition.

In addition, we would note that our conclusion herein appears to be consistent with another opinion of this office where, it was stated that 'it would be legal to use registration books on weekends and at night if these times were publicized.' Op. Att'y. Gen. (Feb. 28, 1975). The word 'weekend' normally encompasses the period between Friday evening and Monday morning, which would, of course, include Sunday. Random House Dictionary of the English Language (unabridged).

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