

1983 WL 182020 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 7, 1983

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

Dear Mr. Ellisor:

Your letter requesting an opinion of this Office has recently been referred to me. I regret that there has been such a delay in issuing this opinion. Specifically you have asked the following questions:

1. May a poll watcher or other registered elector challenge the ballot of a voter on the grounds of unauthorized assistance when the poll manager has permitted the voter to have assistance for being either physically handicapped or illiterate when the watcher or other elector issuing the challenge has information or knows of his own personal knowledge that the voter is neither physically handicapped nor illiterate?

Yes. It has been the prior oral opinion of this Office that if a manager believes that a voter is not entitled to assistance but the voter insists that he does, the person should vote a challenged ballot. This has also been the advice given by your office as set out in the Poll Manager's Handbook for the Conduct of General Elections, 1982, page 11.

The general rule of law as stated in [Etiwan Fertilizer Co. v. S.C. Tax Commission](#), 217 S.C. 354, 60 S.E. 2d 682 (1950) is that: . . . where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time such construction is entitled to weight, and should not be overruled without cogent reasons. [City of Spartanburg v. Leonard](#), 180 S.C. 491, 186 S.E. 395; [U.S. Rubber Products v. S.C. Tax Comm.](#), 189 S.C. 386, 1 S.E. 2d 153; [Harling v. Board of Com'rs of Police Insurance and Annuity Fund](#), 205 S.C. 319, 31 S.E. 2d 913.

The question you present is just slightly different from this situation in that the watcher and not the poll manager challenges the person's qualifications; however, it still entails the question of whether or not the person was properly afforded assistance.

SOUTH CAROLINA CODE OF LAWS, 1976, Section 7-13-780, provides that:

[O]nly those persons who are unable to read or write or who are physically unable or incapacitated from preparing a ballot or voting shall be entitled to receive assistance of any kind in voting. (Emphasis added.)

Section 7-13-810 provides in part that:

. . . challenges may be made at any time prior to counting the ballots as to absentee voters. Nothing contained herein shall affect the right of any elector or qualified watcher to challenge the vote of any person which is fraudulent or when the challenge is based on evidence discovered after the vote is cast.

Section 7-25-20 makes it a misdemeanor for:

[a]ny person . . . [to] fraudulently offer or attempt to vote in violation of this Title or under any false pretenses as to any circumstances affecting his qualification to vote . . .

Section 7-25-100 makes it an offense for:

*2 . . . any voter . . . except as provided by law, [to] allow his ballot to be seen by any person . . .

See also Section 7-25-190; [South Carolina Constitution Article II, Sections 1, 10](#); [State ex rel Edwards v. Abrams, 270 S.C. 87, 240 S.E. 2d 643 \(1978\)](#). Therefore, if a person does not actually require assistance but receives assistance, it would be grounds to challenge the ballot of that person.

2. To what extent, if any, may a member of the State Election Commission or a county election commission involve themselves in the campaign of a candidate(s) prior to and during an election that such commissioner is responsible for conducting or supervising?

There is no statute which would prohibit the members of an election commission from being involved in political party activities. (See for example SOUTH CAROLINA CODE OF LAWS, 1976, Section 61-1-30 which prohibits certain political activities for members of the Alcoholic Beverage Control Commission.

However, the State Election Commission and the County Election Commissioners are responsible for conducting the elections. Additionally, Section 7-17-210 provides that the State Election Commission constitutes the Board of State Canvassers, Section 7-17-10 makes the County Election Commission the County Board of Canvassers. Each body must canvass the votes and decide protects and contests within their jurisdictions. It would, therefore, not seem proper for these persons to participate in a protest or contest of an election for which they have been actively involved with the campaign of one candidate. Cf. SOUTH CAROLINA CODE OF LAWS, 1976, Section 5-7-130; SOUTH CAROLINA CODE OF LAWS, 1976, as amended, Section 8-14-460 (these statutes concern voting on an issue where the individual has a financial interest; however, the underlying principle of not voting on an issue where there could be a potential conflict of interest would be the same).

It has been the prior opinion of this Office that ‘ . . . common law rules on the disqualification of judges extends to administrative bodies or officers exercising judicial or quasi-judicial functions.’ (July 21, 1982, opinion of James M. Holly to J. Dawson Addis, copy enclosed.) This opinion proceeds to cite Am. Jur. 26, Administrative Law, Sections 64, 860-861 for the proposition that ‘[g]rounds for disqualification . . . include situations where such an officer . . . has a personal . . . interest or is biased or prejudiced in a matter before him.’

As stated in Mr. Holly's letter, however, only the commissions and their members can definitely decide if this constitutes a disqualifying ground in that this is a question of law and fact reserved to the Commission and its members.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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