

1981 WL 157883 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 27, 1981

*1 Honorable William Branton
Representative
District No. 98
100 East Dorchester Road
Summerville, South Carolina 29483

Dear Representative Branton:

This letter is to confirm our telephone conversation of July 23, 1981. A few days ago you forwarded to me a copy of H. 3127 which provides the procedure for electing the Board of Trustees of Summerville School District No. 2. You have inquired if Section 2(b), which requires all potential candidates to obtain a nominating petition of three (3) percent of the qualified electors of the district, would violate South Carolina Code of Laws, 1976, Section 7-11-70. Section 7-11-70 requires a candidate 'for any office in this State' to obtain a nominating petition of five (5) percent of the qualified registered electors of the geographic area of the office for which he offers.

This provision was originally placed in the Code in 1974. The title to the 1974 Act, Act No. 1235, establishes that the provision is to 'require a uniform percentage of electors for petition candidate petitions.' Our Office has previously issued an opinion that the only reasonable interpretation of the 1974 Act regarding nominating petitions is that '... the General Assembly intended to repeal by implication any prior special or general acts in this area or any provisions of acts thereon.' Letter of August 15, 1978 to Edward P. Perrin from James M. Holly (copy enclosed). Our Office has also interpreted the petition requirements to control a nominating petition in a school election.

However, the Legislature would, of course, have the authority to enact subsequent legislation to the 1974 general law that would vary from the general requirements.

It has been stated that when a general law and a special law exist and contain inconsistent provisions, the special provisions control. 82 C.J.S. Statutes § 347(b). Additionally the courts in this State have held that special laws may be enacted regarding school matters and will not violate the provisions of [Article III, Section 34 of the South Carolina Constitution](#). [Smythe v. Stroman](#), 251 S.C. 277, 162 S.E.2d 168 (1968).

Therefore, a bill could be passed that would require only three (3) percent of the qualified electors in that area to sign a nominating petition for a school trustee.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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