

1980 WL 121178 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1980

*1 Mr. John M. Horlbeck
Chairman
American Party of South Carolina
P. O. Box 297
Charleston, SC 29402

Dear Mr. Horlbeck:

Your recent letter addressed to James Ellisor, Executive Director of The State Election Commission has been referred to me for reply. You have stated that a town has selected the nonpartisan election procedure established by South Carolina Code of Laws, 1976 Section 5-15-63. You have inquired if an election for Commissioners of Public Works would require candidates to file a petition pursuant to South Carolina Code of Laws, 1976, as amended, Section 5-15-70 or Section 5-15-110. I assume from the context of your letter that the municipality is requiring a petition to be filed as opposed to simply filing for offices.

South Carolina Code of Laws, 1976, Section 5-31-210 requires three Commissioners of Public Works to be elected at the time of the election on bonds for Public Works. Section 5-15-70 requires a candidate to obtain ‘. . . not less than three and not more than five percent of the qualified electors in the municipality.’ Section 5-15-110 states that [c]andidates for municipal offices in any special or partisan general election nominated by petition shall file the necessary petition . . . A nominating petition shall bear the signatures of not less than five percent of the qualified electors of the municipality

Section 5-15-70 is derived from the 1977 Act (Act No. 81) which rewrote a substantial part of municipal home rule and provided for nonpartisan municipal elections. A close reading of the two statutes clearly indicates that Section 5-15-70 would control petition procedures in a nonpartisan election.

The last paragraph in Section 5-15-70 states that

[i]f the petition method is authorized, the candidate shall file the necessary petition with the municipal clerk forty-five days prior to the general or special election . . . (emphasis added)

Section 5-15-110 states in part that candidates in a special or partisan election shall file with the municipal election commission forty-five days prior to the elections.

These two sections are obviously establishing petition and filing procedures for two types of elections—partisan and nonpartisan. Therefore, if a municipality has established a nonpartisan petition procedure for elections, the petition requirements of Section 5-15-70 would control for all elections, special and general, conducted in that municipality.

Additionally you have inquired if it is possible for a ‘partisan or special municipal election to take place on the same day as a nonpartisan election . . .’ As a municipality must chose whether or not to have partisan or nonpartisan elections, it would seem that it would be impossible for a partisan election to be held in conjunction with a nonpartisan election in a municipality as they are mutually exclusive. South Carolina Code of Laws, 1976, as amended, Section 5-15-60. I believe your real question is if a

special election can be held in conjunction with another election, either partisan or nonpartisan. The answer to that question is that it could.

Yours very truly,

*2 Treva G. Ashworth
Senior Assistant Attorney General

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