

1980 WL 120885 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 19, 1980

\*1 Release O. Boyd  
Chairman  
Richland County Board of Registration  
Post Office Box 4069  
Columbia, South Carolina 29240

Dear Ms. Boyd:

You have asked the opinion of this Office on what procedures must a person undertake to have his name changed in accordance with the laws of this State so that the change can be entered on the voter registration records. Also, you have asked what type of documentation of such a change is sufficient.

Under the common law, one may change his name without resort to a judicial proceeding as long as it is not done for a fraudulent purpose. The common law, where it is not altered by the Constitution or statute, serves as the law of this State. § 14-1-50, *Code of Laws of South Carolina*, 1976. Although §§ 15-49-10 to 15-49-50 provide a judicial procedure for the change of one's name, statutes such as these have been held not to alter the common law. Rather, they provide an additional, and more efficient and reliable, method for changing a name. Therefore, pursuant to the common law as it exists in South Carolina, one may change his name without resort to a judicial proceeding so long as it is not done for a fraudulent purpose, and a change so effected should be accepted by the boards. *Brayton v. Beall*, 73 S.C. 308 (1906); *U.S. v. Cox*, 593 F.2d 46 (6th Cir., 1979); *In Re Miller*, 243 S.E.2d 464 (Va. 1978); *In Re Mahlman*, 216 S.E.2d 147 (N.C. 1975); 65 C.J.S., Names, § 11(1), (2); 57 *Am.Jur.2d*, Name, §§ 10, 11.<sup>1</sup>

Boards of registration, for obvious reasons, should obtain adequate documentations, or proof, of any change of name. See §§ 7-5-170, 7-5-200, 7-5-440. Where a person changes his name unilaterally, it is usually accomplished through general usage or habit. *Brayton v. Beall*, *supra*. Thus, the boards could require registrants so changing their names to present several documents that demonstrate the general nonfraudulent use of the name, e.g. permits, licenses, official identification documents, employment identifications, bank or financial records, military records, etc. Other reasonable procedures could be developed by the boards to discharge this duty. *Abel v. Bell*, 220 S.C. 1 (1956); *Davidson v. Eastern Fire & Casualty Ins. Co.*, 245 S.C. 472 (1965); 2 *Am.Jur.2d*, Administrative Law, §§ 191, 233-255.

Based on the foregoing, it is the opinion of this Office that a board of registration should accept for their records a change of name effected by a registrant without the benefit of a judicial proceeding, where the registrant establishes, through reasonable procedures required by the board, the general nonfraudulent use of the name.

Sincerely,

James M. Holly  
Assistant Attorney General

Footnotes

<sup>1</sup> It has not been definitively established that a person has a constitutional right unilaterally to change his name or to assume any name he chooses. See *Jech v. Burch*, 466 F.Supp. 714 (D.Ha. 1979); *Forbush v. Wallace*, 341 F.Supp. 217 (M.D.Ala. 1971).

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