

1979 WL 43524 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 16, 1979

*1 William B. Regan, Esquire
Corporation Counsel
City of Charleston—Legal Dept.
Post Office Box 1237
Charleston, South Carolina 29402

Dear Mr. Regan:

You have asked the opinion of this Office on whether a petition candidate for a seat on a municipal council based upon single member districts must comply with the petition signature requirement of § 7-11-70 or [§ 5-15-110 of the Code of Laws of South Carolina](#), 1976, as amended. Because the language of these statutes suggest that either might be applicable, and because in this instance they contain differing requirements, the legislative history of each must be examined in order to determine the intent of the General Assembly.

The general petition signature requirement of § 7-11-70, which was enacted in August of 1974 as Section 5 of Act No. 1235, 1974 Acts and Joint Resolutions [1974 (58) 2866],¹ is as follows:

A candidate's nominating petition for any office in this State shall contain the signatures of at least five percent of the qualified registered electors of the geographical area of office for which he offers as a candidate . . . [Emphasis Added]

In the circumstances recited in your request, the geographical area referred to in this section should be the single member district. As noted hereinafter, the percentage requirement in [§ 5-15-110](#) is based on the entire municipality.

In June of 1975, [§ 5-15-110](#) with its present petition signature requirement was enacted as a provision within Article 7, Act No. 284 of the 1975 Acts and Joint Resolutions [1975 (59) 692]. Also see Section 4, Act No. 81, 1977 Acts and Joint Resolutions [1977 (60) 135]. This section requires that a nominating petition of a candidate for municipal office 'shall bear the signatures of not less than five percent of the qualified electors of the municipality' [Emphasis Added]. Petition candidates for municipal offices previously were required to obtain on their petitions the signatures of not less than two percent of the qualified electors in the municipality and in any event, not more than one thousand such signatures. § 47-57.5, Code of Laws of South Carolina, 1962, as amended by Act No. 342, 1973 Acts and Joint Resolutions [1973 (58) 422]. Thus, Act No. 284 was subsequent to Act No. 1235 and specifically altered the petition signature requirement for municipal offices as it previously existed in the title of the Code dealing with municipalities.

The primary rule of statutory construction is to effect the intent of the legislature. [State v. Harris](#), 268 S.C. 117 (1977). The sequence and provisions of the enactments noted above indicate that notwithstanding the language of § 7-11-70 [Section 5, Act No. 1235], the General Assembly must have intended that [§ 5-15-110](#) [Article 7, Act No. 284] would govern the petition signature requirement for municipal offices regardless of the method of election. See § 5-15-20, which provides the methods of election for municipal councils and which was a provision of Article 7, Act No. 284. Also supporting this conclusion as to the legislative intent is § 5-15-10, another provision within Article 7 of Act No. 284, which states:

*2 Municipal . . . elections shall be conducted pursuant to Title 7 . . . except as provided for specifically in Chapters 1 through 17 [of Title 5].²

As noted above, § 5-15-110 specifically provides a petition signature requirement. Furthermore, reaching the conclusion that § 7-11-70 governs the situation posed by your question would render meaningless the specific language of § 5-15-110 basing the percentage requirement on the entire municipality and would result in a statutory construction, which as a general rule, should be avoided. [State ex rel. McLeod v. Montgomery](#), 244 S.C. 308 (1964).

Based on the foregoing reasons, it is the opinion of this Office that a petition candidate for a seat on a municipal council based upon the single member district method of election must file a nominating petition bearing the 'signatures of not less than five percent of the qualified electors of the municipality' pursuant to § 5-15-110.

Sincerely,

James M. Holly
State Attorney

NOTE: Due to a subsequent legislative change, this opinion alters the conclusion in the opinion prepared by Senior Assistant Attorney General Treva G. Ashworth, dated April 29, 1975 and addressed to James B. Ellisor, Executive Director of the State Election Commission.

Civil Action No. 79-1796-8

JAMES J. ERENCH, Plaintiff

-v-

**ROBERT B. PEARLMAN, MALCOLM D. HAVEN, MELVIN BROWN, JR., and JOHN
KERR, all in their official capacities as members of the City of Charleston Election Commission,**

Defendants

ORDER

This case was instituted by the plaintiff seeking access to the ballot as a petition candidate from District 11 in the Charleston municipal election scheduled for November 6, 1979. At the time this action was brought, there were approximately twenty-nine thousand, six hundred and eighty (29,630) registered voters in the City of Charleston, and approximately two thousand, one hundred sixty-one (2,161) registered voters in District 11. The Charleston City Council is composed of twelve (12) representatives, each elected from a specific geographical district. The Election Commission for the City of Charleston determined that the plaintiff's timely filing of petitions purporting to contain one hundred seventy (170) registered electors' signatures would not be sufficient for plaintiff to become a petition candidate in the forthcoming election, because the plaintiff, in order to qualify as a petition candidate, was required by [S.C. Code Ann. § 5-15-110](#), as amended, to file petitions with the signatures of five per cent (5%) of the registered electors of the entire city. This would require the plaintiff, and any other petition candidate, to submit signatures from one thousand, four hundred eighty-four (1,484) electors however, if the five per cent (5%) rule pertained to the single district in which petitioner resided only one hundred eight (108) electors' signatures would be necessary. It was brought to the court's attention that the Democratic nominee for this forth-coming election attained his position on the ballot with two hundred twenty-seven (227) votes.

*3 This action was brought pursuant to [42 U.S.C. § 1983](#) and [28 U.S.C. §§ 1343](#) and [2201](#). An expedited hearing was held to avoid any postponement of the November elections.

The plaintiff asserts that the aforesaid South Carolina statute, as applied by the City of Charleston Election Commission, effectively and unconstitutionally denies him the right to appear on the ballot as a petition candidate. The question that

he presents is elemental and has been considered numerous times by the federal courts. See, e.g., Mandel v. Bradley, 432 U.S. 173, 97 S.Ct. 2238, 53 L.Ed.2d 199 (1977); Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); Jennes v. Fortson, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971); Moore v. Ogilvie, 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969); Toporek v. State Election Commission, 362 F.Supp. 613 (D.S.C. 1973); United Citizens Party v. State Election Commission, 319 F.Supp. 784 (D.S.C. 1970). With these legal principles in mind, the court has considered both the facts and the statutes in issue. It is fundamental that constitutional questions should be decided only when unavoidable, Ohio Bureau of Employment Services v. Hodoroy, 431 U.S. 471, 97 S.Ct. 1393, 52 L.Ed.2d 513 (1977); Doe v. Lukhard, 493 F.2d 54 (4th Cir. 1974), vacated and remanded on other grounds, 420 U.S. 999, 95 S.Ct. 1441, 43 L.Ed.2d 758 (1975); Yahr v. Resor, 431 F.2d 690 (4th Cir. 1970), and this court does not feel it necessary in this case to address the constitutionality of the South Carolina statute. S.C. Code Ann. § 5-15-110, as amended, would place an impossible burden on petition candidates in municipal elections, where candidates are elected from single member districts within the municipality, and this court is confident that the General Assembly of South Carolina never intended to place such an onerous burden on petition candidates as the Election Commission's interpretation of the aforesaid statute would impose. S.C. Code Ann. § 7-11-70, the petition statute applicable to all elections in South Carolina, requires only that a petition candidate have the signatures of five per cent (5%) of the registered electors of the geographic district sought to be represented. The General Assembly, in this court's opinion, could not have intended to erect a virtually insurmountable barrier for petition candidates in a municipal election and, at the same time, provide for a reasonable five per cent (5%) signature requirement for petition candidates for all other offices. This court must construe § 5-15-110, in light of § 7-11-70, to mean nothing more than that petition candidates for upcoming Charleston City Council elections must obtain the signatures of five per cent (5%) of the electors only in the district that he or she seeks to represent.

The court has been advised that the plaintiff seeks neither attorney's fees nor costs in this action. Accordingly, it is hereby

ORDERED, ADJUDGED, AND DECREED that the defendants be required to place plaintiff's name on the ballot as a petition candidate from District 11 in the forthcoming General Election provided plaintiff has heretofore timely presented to said defendants a petition with the signatures of five per cent (5%) of the registered electors of that district.

*4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each side shall pay their own costs herein.

AND IT IS SO ORDERED.

Charleston, South Carolina

October ?? 1979

Sol Blatt Jr.

UNITED STATES DISTRICT JUDGE

Footnotes

- 1 This Act revised substantially the candidate nominating procedures. See Title to Act 1235.
- 2 The existence of this language alone mandates the application of the petition signature requirement in § 5-15-110.

1979 WL 43524 (S.C.A.G.)