

1978 WL 34601 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 15, 1978

***1 RE: 1978 Election of Commissioners of Spartanburg Sanitary Sewer District**

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Dear Mr. Perrin:

You have recently asked the opinion of this Office concerning the following questions:

1. Must the nominating petitions for the office of commissioner of the Spartanburg Sanitary Sewer District (SSSD) for the three commissioners residing outside the city limits of the City of Spartanburg be signed by 'one hundred or more qualified electors', as provided in Section 6 of Act 1503 of 1970, or by 'at least five per-cent of the qualified registered electors', as provided in [§ 7-11-70 of the CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended?
2. Must such nominating petitions be filed with the Spartanburg County Election Commission 'not later than sixty days prior to the date of the holding of the general election', as provided in Section 6 of Act 1503, or 'for special . . . elections, by at least twelve o'clock noon on the thirtieth day prior to the date of the holding of such election . . .', as provided in [§ 7-13-350 of the CODE, 1976](#), as amended?
3. Is the election of the three commissioners of the SSSD from the area of the district outside the City of Spartanburg scheduled for November 7, 1978, a general or special election as defined by [§ 7-1-20, CODE](#), as amended?

As your questions recognize, there is an apparent conflict between the requirements of Act 1503 and the cited statutes. Therefore, it is necessary that we analyze these statutes and their impact on Act 1503 by applying certain rules of statutory construction.

The paramount rule of statutory construction is that the legislative intent and purpose must prevail if it can reasonably be discovered in the language used by the legislature. [See numerous cases annotated at West's South Carolina Digest, Vol. 17, Statutes, Key No. 181(1).] Furthermore, 82 C.J.S., [Statutes](#), § 292 states:

Where a later act covers the whole subject of earlier acts, . . . , and plainly shows that it was intended . . . to cover the whole subject then considered by the legislature, and to prescribe the only rules with respect thereto, it operates as a repeal of all former statutes relating to such subject matter, even though it makes no reference to the earlier statutes.

The above quoted rule of statutory construction states a variation of the general rule on the repeal of statutes by implication. Both the general rule and the variation thereon are further discussed in 82 C.J.S., [Statutes](#) §§ 286, 290, 291, and 298 [at pp. 512-513]; 1A [Sutherland on Statutory Construction](#), §§ 23.09 and 23.15 (1972); the April 29, 1975 informal opinion of this Office which discusses a related issue and which is attached hereto; and [State ex rel McLeod v. Mills](#), 256 S.C. 21, 180 S.E.2d 638 (1971).

When enacted in 1970, the requirement in § 6 of Act 1503 of 100 signatures in the nominating petitions of the SSSD commissioners was the same number required of petition candidates for similar elective offices under the applicable general act. Act 971, § 2A(5), (1966) as amended by Act 955, § 1A(6), (1968). Act 1503 further provided that such nominating petitions had to be filed with the Spartanburg Election Commission 60 days prior to the general election.

*2 In 1974 the General Assembly passed Act 1235 which was entitled:
AN ACT TO AMEND . . . ACT NO. 971 OF 1966, AS AMENDED, RELATING TO POLITICAL PARTIES AND NOMINATION OF CANDIDATES, SO AS . . . TO SET THE SAME TIME FOR CERTIFYING ALL CANDIDATES, . . . AND TO REQUIRE A UNIFORM PERCENTAGE OF ELECTORS FOR PETITION CANDIDATE PETITIONS; . . .

The language of this title, which is evidence of the intent and purpose of the General Assembly, clearly demonstrates that Act's objective was to standardize the statutory requirements regarding petition candidates. 7A, Sutherland, § 20.10.

The 1974 amendments pertaining to the number of electors required on candidate's petitions and the time for filing or certifying such petitions are codified in §§ 7-11-70 and 7-13-350 of the CODE (1976), respectively. § 7-11-70 provides: 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 the office for which he offers . . . provided, that no such petition shall be required to furnish the signatures of more than 10,000 . . . electors . . . [Emphasis Added]

Section 7-13-350, as amended, regulates the filing date for petition candidates by providing:

The nominees in a petition, . . . for one or more of the offices, national, State, circuit, multicounty district or county to be voted on in the general election shall be placed upon the . . . ballot if the names of such nominees are certified . . . not later than twelve o'clock noon on September eighteenth . . . and for special and municipal elections, by at least twelve o'clock noon on the thirtieth day prior to the date of . . . such election . . .

The language of these statutes and in the title of Act 1235 clearly show that the General Assembly intended these statutes to govern and cover the nomination and election of all petition candidates. Therefore, there is no reasonable construction other than that the General Assembly intended to repeal by implication any prior special or general acts in this area or any provisions of acts thereon. This repeal would include the relevant provisions of § 6 of Act 1503.

More specifically with regard to § 7-13-350 and your question (2), the statute's language plainly indicates that the General Assembly intended for the September eighteenth date to apply to any elective office representing an area within a county, such as a special service district, except for municipalities. Furthermore, it appears that the General Assembly intended that with regard to petitions the term 'certifying' would be recognized as synonymous with 'filing' in § 7-13-350. Furthermore, 'certifying' in the context of nomination by petition would have no other reasonable meaning.

A recently passed bill further indicates that the General Assembly intended §§ 7-11-70 and 7-13-350 to cover the area of the nomination of petition candidates. Bill R744, which will be codified as § 7-11-71, CODE, as amended, provides that petition candidates for the office of commissioner of any public service district shall need no more than 250 signatures on their petitions. This demonstrates that the General Assembly recognized that the application of § 7-11-70 to such districts as the SSSD may have created some difficulties. Furthermore, please be advised that although R744 was to take effect upon approval by the Governor, it must be submitted to and approved by the United States Department of Justice under the authority of 42 U.S.C. § 1973. Any election held under R744 prior to such approval by the Department of Justice may be subject to invalidation.

*3 With regard to question 3, § 7-1-20(1) defines a general election as the ‘election of officers to the regular terms of office provided by law, whether State, United States, county, municipal or of any other political subdivision of the State . . . [emphasis added].’ Section 6 of Act 1503 provides that ‘the three members [of the SSSD commission] elected from area outside the city [City of Spartanburg] shall be elected for four year terms in the general election of 1970 and every four years thereafter . . . [emphasis added].’ Furthermore, Section 3 of the Act states that the SSSD shall be a perpetual ‘body politic and corporate’ with such boundaries and purposes as the General Assembly shall set forth. Thus, the election of the commissioners of the SSSD scheduled for November 7, 1978, is one to elect officers to the regular term of office of a political subdivision of the State.

Therefore, for the foregoing reasons, it is the opinion of this Office that there is no reasonable interpretation other than that the mandates of §§ 7-11-70 and 7-13-350, as explained above, would control the election of commissioners for the SSSD scheduled for November 7, 1978, and that such would be a general election under § 7-1-20(1).

Sincerely yours,

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Staff Attorney

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