

1975 WL 29235 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 29, 1975

*1 Mr. James B. Ellisor
Executive Director
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29205

Dear Mr. Ellisor:

We are in receipt of your letter in which you requested an opinion of this office as to the effect of Act No. 1235 of the 1974 Acts and Joint Resolutions, upon the petition and certification requirements established by the municipal nominations and elections laws as found at 47-57 et seq.

South Carolina Code of Laws, 1962, as amended, Section 47-57.3, which is a section of the municipal nominations and elections laws, states that 'certification of nominees of primaries shall be made at least fifteen days prior to such general or special election.' (Emphasis added) Section 47-57.5 also of the municipal nominations and elections laws states in part: The names of candidates for municipal offices to be voted on in a special or general election shall be placed upon the ballot upon the filing with the municipal election board or with the mayor or intendent, if such board has not been appointed, of a petition nominating such candidate signed by not less than two percent of the qualified registered electors of the municipality . . . and in no event shall any petition require more than 1,000 signatures regardless of the number of electors eligible to vote in any municipality. (Emphasis added)

Prior to the 1974 Amendment, South Carolina Code of Laws, 1962, as amended, Section 23-400.15 read in part as follows: In case of county or municipal elections, the nominees of any party primary or party convention shall be placed upon the appropriate official ballot . . . if the names of nominees in municipal elections are certified to such authority at least fifteen days prior to the date of the holding of the election . . . (Emphasis added)

Therefore, prior to the 1974 Amendment the requirements of the two certifications statutes were identical. However, subsequent to the 1974 Amendment, Section 23-400.15 now reads as follows:

The nominees in the petition . . . to be voted on in the general election shall be placed upon the appropriate official ballot for the election as candidates nominated by such petition or party by the officer, commissioners or other authority charged by law with preparing such ballot if the names of such nominees are certified to such officer, commissioner or other authority, as the case may be . . . for . . . municipal elections, by at least twelve o'clock noon on the forty-fifty day prior to the day of the holding of such election, of if the forth-fifty day falls on Sunday, by twelve o'clock noon on the following Monday. (Emphasis added)

Unlike the situation under previous law there now exists a conflict as to the statutory and municipal nomination requirements for certification of candidates.

In addition Section 23-400.16 now reads:

A candidate's nominating petition for any office in this State shall contain the signature of at least five percent of the qualified registered electors of the geographical area of the office for which he offers as a candidate . . . the petition shall be certified to . . . the Clerk of the municipality in case of municipal office . . . (Emphasis added)

***2** Therefore, conflict also exists in the general code provisions regarding petition candidates and the requirements established in the municipal and election laws.

The title to Act No. 1235 of the 1974 Acts and Joint Resolutions states that this is an act which will ‘ . . set the same time for certifying all candidates, including municipal, and to require a uniform percentage of electors for petition candidate petitions. . . ’ Obviously the intent of the General Assembly was to enact legislation which would apply uniformly throughout the State. Therefore, the question arises if Act No. 1235 repeals by implication those provisions in 47-57 et seq. which conflict with the 1974 provisions.

1A Sutherland, Section 23.09 which deals with repeal by implication states:

The legislature is assumed to intend to achieve a consistent body of law . . . Where consistent body of laws cannot be maintained without the abrogation of a previous law, a repeal by implication of previous legislation . . . is readily found in the terms of a latter enactment. It is the necessary effect of the latter enactment construed in the light of the existing law, regardless of whether such an effect is actually contemplated by the legislature or is wholly unforeseen, that ultimately determines an implied repeal. . . . In the process of construing a statute, the intent of the legislature is always of prime importance.

73 Am. Jur.2d Statutes Section 412 states:

Where a statute is intended to cover all the ground of prior ones on the same subject, and revises the entire law on such subject, all prior conflicting laws will be repealed even though they are special acts. See also 1A Sutherland Section 23.15.

73 Am. Jur.2d Statutes Section 417 states that:

There is no rule which prohibits the repeal by implication of a special or specific act by a general or broad one. Thus, a special or specific act must yield to the later general or broad act where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act.

The title to the 1974 Act clearly states that the intent of the act is to make the provisions regarding certification and required percentages for petition candidates uniform.

The requirements of certification as established in the Code at 47-57.3 until the 1974 amendment were identical with general code provisions governing municipal elections. Therefore, the law found at 47-57.3 was not originally intended to create an exception to the time requirements of certification in municipalities enacting these provisions by ordinance. The 1974 amendment would repeal by implication the now inconsistent provisions of 47-57.3 requiring fifteen days for certification and would be replaced with the uniform requirements of forty-five day certification.

Similarly, the provisions of 47-57.5 were not originally created as an exception to the general petition requirements. In 1973, 47-57.5 was amended to require petitions to be filed if signed by two percent of the population. This 1973 amendment now conflicts with the 1974 amendment requiring a uniform five percent of the qualified registered electors. to sign a petition and, therefore, is repealed by implication.

***3** It is the opinion of this office that the specific requirements of Act No. 1235, codified in South Carolina Code of Laws, 1962, as amended, Sections 23-400.15 and 23-400.16, requiring certification of candidates in municipal elections

forty-five days prior to the election and requiring signatures on petitions of at least five percent of the qualified registered elections of the geographical area, will supercede the requirements found in 47-57.3 requiring certification fifteen days prior to the election and 47-57.5 requiring petitions of two percent of the qualified registered electors.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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