

1975 WL 29260 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1975

***1 Re: Proposed City of Columbia Annexation Election**

William F. Able
Richland County Attorney
700 Security Federal Building
Columbia, South Carolina 29201

Dear Mr. Able:

In your recent letter, you raised various questions concerning freeholders in relation to a proposed annexation election. Specifically you have asked the following questions:

1. If an individual owns several pieces of property in the area proposed to be annexed, how many times can he vote as a freeholder?

Research has failed to disclose any definitive authority on the question of how many times the owner of more than one piece of property in the area proposed to be annexed may vote. However, since the statutes do not mention multiple votes for any individual, and as any such provision would seem to conflict with the principle of one man-one vote, it is the the opinion of this Office that an individual freeholder has but one vote regardless of the number of tracts he may own. Any other construction would make it possible for an individual to endlessly subdivide his property on the deed books in order to control an election.

2. If property is owned jointly, who can vote?

Code of Laws of South Carolina, Section 47-19.19, 1962, as amended, speaks of a 'freeholder' as one who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract. Therefore, I must conclude that each joint tenant who has at least a one-tenth interest in the estate at the date of the petition or referendum is entitled to a vote.

3. What form does the list have to be in when it is sent to the polls? (alphabetical, street addresses, etc.)

There is no provision in South Carolina law as to the particular form for the list when it is sent to the polls. As no particular form is statutorily required, I would recommend that you adopt the form which is most administratively convenient.

4. Give a legal definition of corporation.

The term 'corporation' is defined in the Constitution of South Carolina (1895), Art. 9 § 1 as including 'all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships, . . .'. Though the old version of Art. 9, § 1 has been revised and rewritten by 1971 Act No. 64, the above-cited definition retains its validity. In addition, BLACK'S Law Dictionary provides the following more thorough definition:

'An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting

of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law.'

***2** 5. Who should be allowed to vote for a corporation?

There is no provision in the South Carolina Code regarding who may vote on behalf of a corporation. In the absence of statutory direction as to who votes for a corporation in a referendum, the corporation's vote should be cast by its officer entitled under the bylaws to act on behalf of the corporation. It should be noted, however, that the person voting on behalf of the corporation in the referendum must be a registered elector. This requirement is imposed for any election by Section 23-61 Code of Laws of South Carolina, 1962, as amended, and, a referendum falls within the definition of 'any election'. Section 23-2, as amended.

It should be noted that the designated person is voting for the corporation only in the referendum and in the corporation's capacity as a 'freeholder' as defined in Section 47-19.19, as amended. In the election, as opposed to the referendum, the corporation has no vote since it does not qualify as a 'registered elector' as required by Section 47-19.13, as amended.

6. What form of authorization should the voter for the corporate freeholder have in order for the poll managers to allow the person to vote on behalf of the freeholder corporation?

The Code does not require any particular form of credentials for a person voting on behalf of a corporate freeholder. Though the County Election Commission has it within its discretion to establish what form of authorization it may require, I would recommend a certified letter from the corporation establishing the authority of this agent to vote on behalf of the corporation.

7. What type of identification, if any, should be required of the person appearing to vote at either as a freeholder or on behalf of a freeholder corporation?

The person appearing to vote as either a freeholder or on behalf of a freeholder should be required to produce such identification as the County Election Commission may see fit in its discretion to require.

8. What provision, if any, should be made for freeholders who do not pay taxes by virtue of some type of exemption such as a disabled veteran and/or a homestead exemption? If these persons names do not appear on the tax records, are they eligible to vote?

Freeholders who do not pay taxes by virtue of some type of exemption should be eligible to vote even though their names do not appear on the tax records. Though Section 47-19.19 defines a 'freeholder' as a property owner 'whose name appears on the county tax records as an owner of real estate', we construe this language as basically definitional in character, as well as intended to provide administrative direction. Though the question is not entirely clear and may eventually require judicial resolution, we do not interpret this language as intending to deny the vote to freeholders who qualify for some type of tax exemption. Though there is apparently no South Carolina precedent in the area, it has generally been the view of other jurisdictions that tax exemption for the property of widows, soldiers, and others does not require that these freeholders be excluded from participating in municipal annexation decisions. 56 Am.Jur.2d, Municipal Corporation, § 71. Owners of tax exempt real property should be allowed to vote upon proof, sufficient to satisfy the Commission, of their ownership of such property.

*3 9. Inasmuch as the record ownership is not transferred by the auditors and/or tax collectors office except effective January 1 of each calendar year, what provision, if any, must be provided for a new owner who has purchased the property since January 1, 1975, but whose name does not appear on the tax records, of Richland County?

Just as alternative means of proof of property ownership should be made available to tax exempt freeholders, new owners who have purchased their property since January 1, 1975, should be allowed to qualify to participate in the referendum by presentment of deed or other certified proof of ownership sufficient to satisfy the Richland County Election Commission. 10. Is a challenge of the old owner proper when the records of Richland County still reflect the property as being in the old owner's name? The same question applies of course to the new owner?

A challenge to the old owner's authority to vote in the referendum is proper. Ownership of property at the date of the petition or referendum is mandated by Section 47-19.19. Therefore, a challenge may be made concerning the lack of authority to participate in the referendum of one who formerly owned property in the area proposed to be annexed regardless of what the county records might show.

I hope this information answers your questions. In the future, it would be helpful if you would forward with your request for an opinion any research you may have on the subject and/or your opinion on the question presented.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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