

1974 WL 27167 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1974

***1 RE: Validity of Certain Registration Certificates**

Mrs. Eloise Kirkland
Registrar
Chairman
County Board of Bamberg County
Bamberg, South Carolina 29003

Dear Mrs. Kirkland:

You have requested an opinion from this office as to whether registration certificates issued under the following set of circumstances are valid and should be entered upon the precinct books. The Bamberg County Board of Canvassers met in May of 1974 to establish extra registration dates for registering the county voters for the July 16, 1974, primary. This meeting was held pursuant to Section 23-65.1 CODE OF LAWS OF SOUTH CAROLINA (1962) (Supp). Section 23-65.1 provides:

Notwithstanding the provisions of § 23-53, boards of registration shall remain open as now provided by law, and in addition thereto, shall remain open and available for registration on any additional days and during such hours as the boards may determine. Due notice of the time and place shall be given by publication in a newspaper of general circulation in the county at least one week in advance. [Emphasis supplied].

Pursuant to this section the Board of Canvassers may, in its discretion, hold extra registration sessions at public places. The language of the statute states that such extra registration sessions are to be held only as the 'boards may determine'. The Bamberg County Board of Canvassers made such a determination as to when additional registration days would be held and where they would be held. Notice of these extra sessions was duly printed in the Bamberg Herald, a county paper of general circulation. Such printed notice is required by Section 23-65.1. The language of that section is couched in mandatory term and states that the county board shall publish such notice.

In the set of facts furnished this office, you state that one member of the Board of Canvassers, on her own and without the consent of the rest of the Board, established different places and dates of registration. This Board member gave an advertisement to the Bamberg Herald which the newspaper refused to publish. She then gave a notice to radio station WWBD. This advertisement was aired on the radio during the time of the alleged registration. This Board member registered a number of people at her self-established registration places.

It is the opinion of this office that such registrations were invalidly made. First, the entire board did not determine or approve these extra registration days. Second, there was no valid notice given as required by Section 23-65.1 CODE OF LAWS OF SOUTH CAROLINA (1962) (Supp.). For registration to be valid, it must be carried out in accordance with existing State laws.

However, despite the fact that such registration has been performed illegally, it is the opinion of this office that those people so registered should be entered upon the precinct books. Such persons registered knowing that the person registering them was a member of the County Board of Canvassers and had the authority to register them. Under the circumstances they felt that they had done all they could do to validly be registered. Since the voter registration books

are closed for the July 16, 1974, primary, if these peoples' names are not entered on the precincts books, they will be disenfranchised through no fault of their own. The general rule is that 'it is no objection to validity of registration law that they registering officer may neglect to perform his duty and thereby disqualify electors.' 25 Am Jur 2d Election § 98 (1966). Furthermore,

*2 [i]t seems where an irregularity in registration is due to the act of the fault of registration officers, the vote of the person so regularly registered will not be render invalid unless there has been utter disregard of the law. Am Jur 2d Election § 111 at 797 (1966).

Therefore, the people registered by the Board member in question, should be put on the County's registration books.

If this office may be of further assistance, please do not hesitate to contact us.

Yours very truly,

Treva G. Ashworth
Assistant Attorney General

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