

1974 WL 27163 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 9, 1974

***1 RE: House Reapportionment Act (R 107 H 2275)**

Mr. Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Charleston, South Carolina

Dear Mr. Sullivan:

Thank you for your letter of July 16, 1974, in which you requested information concerning the date and time a petition candidate must file to be eligible to offer in the general election.

In the case of [Toporek v. South Carolina Elections Commission](#), 362 F.Supp. 613 (1973) the court found unconstitutional the statutory requirement that petition candidates file for office as of the day of the primary. This was held to be unconstitutional due to the disparity of requiring petition candidates to file up to five months before the November general election and yet allowing candidates nominated by a political party to withdraw up to thirty (30) days prior to an election. In 1974, the General Assembly included in the House Reapportionment Act an amendment to Section 23-400.16 of the South Carolina Code of Laws which deals with petition procedures. The language previously held to be unconstitutional in the Toporek case was reenacted in this act. As the language reenacted the precise language held to be unconstitutional, the court's decision in the Toporek case would still be applicable and this provision would still be deemed to be unconstitutional.

Following the Toporek case, the State Elections Commission has utilized the following time requirements: for a county-wide office or greater—35 days; county-wide—20 days; municipal offices—15 days. These time requirements would still be applicable.

Sincerely,

Treva Ashworth
Assistant Attorney General

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