

1974 WL 28000 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 12, 1974

***1 Re: No. 78—Elections**

Honorable James B. Ellisor
Executive Director
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:

You have requested that we advise you as to whether the Board of State Canvassers or the County Board of Canvassers would decide cases under protest that involve Members of the State House of Representatives.

Section 23-453 of the South Carolina Code of Laws provides in part:

The county boards shall decide all cases under protest or contest that may arise in their respective counties in the case of county officers and less than county offices. . . .

Section 23-476.1 provides in part:

The State Board shall decide all cases under protest or contest that may arise in the cases of Federal officers, State officers, and officers involving more than one county. . . .

Whether the State Board or the County Board is to decide election contests involving Members of the House depends upon whether a House Member is to be considered a county or State officer. Section 23-287 of the Code provides as follows:

All of the provisions of Title 23 of the 1962 Code governing a State office shall apply to the offices of State Senator and of member of the House of Representatives except in those instances in which special provision is made for such offices and in those instances such special provisions shall control.

Inasmuch as special provision has not been made for the office of Member of the House of Representatives, it is our opinion that a House Member is to be considered to be a State officer; therefore, the Board of State Canvassers is the body before which cases under protest involving Members of the House of Representatives are to be presented.

Kind regards,

C. Tolbert Goolsby, Jr.

1974 WL 28000 (S.C.A.G.)