



ALAN WILSON  
ATTORNEY GENERAL

October 12, 2020

Joseph M. Cronin  
Town Administrator  
Town of Seabrook Island  
2001 Seabrook Island Rd.  
Seabrook Island, SC 29455

Dear Mr. Cronin:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

In response to the ongoing threat posed by the Novel Coronavirus 2019 ("COVID-19") pandemic, and pursuant to Section 5-7-250(d) of the South Carolina Code of laws, the Mayor and Council of the Town of Seabrook Island adopted Emergency Ordinance No. 2020-03 on June 30, 2020. Emergency Ordinance No. 2020-03, which went into effect on July 1, 2020, requires customers and employees at all business establishments within the town (with limited exceptions) to wear a face covering while inside any portion of an establishment that is open to the public or while waiting in line to enter an establishment. On August 25, 2020, the Mayor and Council adopted a new ordinance. Emergency Ordinance No. 2020-05, which extended these requirements through October 25, 2020.

During the Town Council meeting on August 25, 2020, the Mayor and Council engaged in a lengthy discussion about the upcoming general election on November 3, 2020. This discussion centered primarily on the topic of whether the town has the authority to require individuals to wear a face covering while voting, while waiting in line to vote, or while working at the polling place. For clarification, the only polling place within the Town of Seabrook Island is located at the Seabrook Island Property Association ("SIPOA") Lake House facility. Under the town's current emergency ordinance, the Lake House facility is considered a "business establishment," as that term is defined in the ordinance, and all individuals inside the facility, as well as those waiting in line to enter, would be required to wear a face covering.

...

On behalf of the Mayor and Council, I now submit the following questions for your consideration:

1) Does the Town of Seabrook Island have the authority to require individuals to wear a face covering while voting, while waiting in line to vote, or while working at a polling place during an election, when the polling place is located within a facility that otherwise meets the definition of a "business establishment" under the town's emergency ordinance?

2) The polling place for the general election on November 3, 2020, will be located within a building that is privately owned by SIPOA. Does the owner of a property that is used as a polling place have the authority to require individuals to wear a face covering while voting, while waiting in line to vote, or while working on their property?

#### Law/Analysis

It is this Office's opinion that a municipality possesses authority to adopt ordinances and to establish fines and penalties for the violation of those ordinances within its corporate boundaries.<sup>1</sup> Specifically, this Office has recognized that municipalities possess the authority to enact ordinances requiring citizens to wear face coverings under certain circumstances. See Attorney General Wilson's Statement on Local Mask Ordinances (June 24, 2020), <http://www.scag.gov/archives/40771#ixzz6a7Mn6ux2> (discussing limitations on municipal authority to enact mask ordinances). While a municipality possesses authority to enact a face covering ordinance with application extending to its corporate boundaries, during an election, the responsibility for "maintain[ing] good order" at a polling place rests with the managers of elections. S.C. Code Ann. § 7-13-140. During an election, managers of election are granted the following authority:

Managers of election are clothed with such police powers as may be necessary to carry out the provisions of this article. The managers shall possess full authority to maintain good order at the polls and to enforce obedience to their lawful

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<sup>1</sup> See S.C. Code Ann. § 5-7-30

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, ... provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries ... The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. ...

commands during an election and during the canvass and counting of the votes. All peace officers shall answer all such calls for help in preserving the peace as may be made by the managers of election.

S.C. Code Ann. § 7-13-140. In fact, the South Carolina Code of Laws explicitly states that law enforcement officers are only allowed to come within a polling place to vote or when “summoned into it by a majority of the [election] managers.” S.C. Code Ann. § 7-13-160 (“On failure of any sheriff, deputy sheriff, policeman or other officer to comply with the provisions of the preceding sentence, the managers of election, or one of them, shall make affidavit against such sheriff, deputy sheriff, policeman or other officer for his arrest.”). This Office has previously construed these statutes as follows:

[W]hile Section 7-13-160 reinforces Section 7-13-140's mandate that election managers possess “full authority to maintain good order at the polls” it balances this authority by requiring the agreement of a “majority of the managers” in order to summon a peace officer. Thus, unless a peace officer is voting, his or her presence at a polling place is determined in the discretion of a majority of election managers—a protection that we believe is designed to alleviate concerns of voter intimidation.

...

Sections 7-13-140 and 7-13-160 clearly entrust election managers with the discretion to determine when peace officers are needed to maintain order at a polling place and put in place a procedure for when to request a peace officer inside of a polling place. It appears the reason for this discretion is to ensure each polling place strikes a balance between maintaining order so as to provide voters with a safe and secure place in which to cast their ballot, while at the same time ensuring voters are not intimidated by too much of a police presence within a given polling place.

Op. S.C. Att’y Gen., 2016 WL 2607246, at 2 (April 1, 2016). Thus, while it is this Office’s opinion that a face covering ordinance is enforceable within a municipality’s corporate boundaries, election managers are responsible for maintaining the orderly conduct of the election process at a polling place and are authorized seek assistance from law enforcement to the extent necessary to carry out this duty. For example, if a dispute over compliance with a face covering ordinance arises in a polling place that disrupts the orderly conduct of the election and the election managers are unable to control the disruption and bring order, law enforcement may be called to assist election managers in restoring orderly conduct.

The request letter separately asks whether a private property owner has authority to require voters to wear face coverings at a polling place which is located on his property. The request letter does not suggest a specific source of authority for the private property owner to enforce a face covering requirement. Presumably such authority would come from either a local face covering ordinance or from the fact that the polling place is located on private property. As is discussed above, the election managers are granted authority to “maintain good order at the

polls” and to call on peace officers for help in preserving the peace at a polling place. The statutes discussed above make no distinction between polling places on public property or private property. Therefore, it is this Office’s opinion that a private property owner would be in a similar position as a municipality or other political subdivision when a polling place is on public property within its jurisdiction. That again would be a matter for the election managers to address if good order at the polls is disrupted. If instead, a private property owner would seek to exclude voters solely by virtue of his ownership and property rights, it is this Office’s opinion that a court would hold such private rights give way to the public interest in access to polling places during an election.<sup>2</sup>

Finally, in a follow-up conversation, you mentioned that town council expressed concern the Governor’s August 2, 2020 Executive Order No. 2020-50, may prohibit the enforcement of local face covering ordinances at polling places.<sup>3</sup> There are two separate sections of this Executive Order which could be read to impact local face covering ordinances at polling places. However, as is discussed further below, it is this Office’s opinion that a court would hold that Executive Order No. 2020-50 does not prohibit enforcement of local face covering ordinances at a polling location as described in the request letter.

First, section 2 of Executive Order No. 2020-50 addresses requirements regarding face coverings. Subsection A encourages local political subdivisions of the State to implement emergency face covering ordinances.<sup>4</sup> Subsection B establishes that face coverings are required

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<sup>2</sup> See Neelley v. Farr, 61 Colo. 485, 527, 158 P. 458, 472 (1916) (White, J., concurring).

The [private property owners] unquestionably had the right to protect their property, and, under certain circumstances, to exclude the public therefrom, but when voting precincts and polling places were established upon such land it thereupon became something more than private property over which private interests had absolute control. A public interest was thereby impressed upon it, entitling any elector to free and undisputed access thereto. If the private interests owning the land whereon the precincts were established required the same to be closed to the public, it is equally certain that the public interest imperatively demanded that there be undisputed access to such precincts and polling places, and the private interests must necessarily be subordinated to the public interest.

<sup>3</sup> The provisions of Executive Order No. 2020-50 were extended and declared to remain in force for the duration of the State of Emergency by Executive Order No. 2020-62, § 1H.

<sup>4</sup> Executive Order No. 2020-50, § 2A

I hereby urge counties and municipalities of this State to enact or implement appropriate and narrowly tailored emergency ordinances, orders, or other measures requiring individuals to wear a Face Covering, as set forth below and further defined herein, in public settings where they are, will be, or reasonably could be located in close proximity to others who are not members of the same household and where it is not feasible to maintain six (6) feet of separation from such individuals or to otherwise practice effective “social distancing” in accordance with CDC and DHEC guidance.

in state government facilities. However, subsection C provides a list of exceptions to this requirement. In particular, subsection C7 provides that “[a] person who is voting or assisting with the administration of an election” is not required to wear a face covering, although it is encouraged. Executive Order No. 2020-50, § 2C7. This exception does not appear to impact the scenario posed in the request letter because it describes the polling place as a privately owned building. Because section 2C is only explicitly applicable to state government offices, buildings and facilities, it is this Office’s opinion that a court would hold that the face covering requirements in section 2B and the exemptions thereto in 2C do not apply to private facilities.

Second, section 4 of Executive Order No. 2020-50 places emergency restrictions on gatherings. In contrast to section 2B and 2C which are applicable to state facilities, section 4 applies more broadly to both public and private property except where explicitly stated otherwise. Broadly, the restrictions on gatherings limit the total number of people to fifty percent of a location’s occupancy as determined by the fire marshal, ends alcohol sales at 11:00 p.m. and assigns responsibility for compliance with social distancing guidelines. Executive Order 2020-50, § 4B. However, subsection G states that these restrictions “do[] not apply to the conduct of official business by, or meetings of, any agency or department of the State of South Carolina or any political subdivision thereof, to include ... the conduct of elections and related activities.” (emphasis added). These restrictions on gatherings are, of course, distinct from the face covering ordinances encouraged in section 2. Therefore, it is this Office’s opinion that a court would hold the exception from the gathering restrictions in section 4G for the conduct of elections does not provide a similar exception from the face covering ordinances encouraged in section 2A.

### **Conclusion**

As is discussed more fully above, while it is this Office’s opinion that a face covering ordinance is enforceable within a municipality’s corporate boundaries, election managers are responsible for maintaining the orderly conduct of the election process at a polling place and are authorized seek assistance from law enforcement to the extent necessary to carry out this duty. See S.C. Code Ann. §§ 7-13-140, 160. For example, if a dispute over compliance with a face covering ordinance arises in a polling place that disrupts the orderly conduct of the election and the election managers are unable to control the disruption and bring order, law enforcement may be called to assist election managers in restoring orderly conduct. The statutes discussed above make no distinction between polling places on public property or private property. Therefore, it is this Office’s opinion that a private property owner would be in a similar position as a municipality or other political subdivision when a polling place is on public property within its jurisdiction. If instead, a private property owner would seek to exclude voters solely by virtue of his ownership and property rights, it is this Office’s opinion that a court would hold such private

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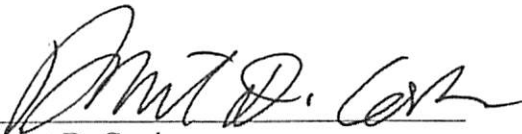
rights give way to the public interest in access to polling places during an election. See Neelley v. Farr, 61 Colo. 485, 527, 158 P. 458, 472 (1916) (White, J., concurring).

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
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