

1973 S.C. Op. Atty. Gen. 249 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3590, 1973 WL 21045

Office of the Attorney General

State of South Carolina

Opinion No. 3590

August 2, 1973

***1 1. Voting privileges cannot be conditioned upon property ownership.**

2. Elections to levy school taxes must be conducted under general election laws.

3. Precinct managers must be appointed by the County Election Commissioners.

Representative

McCormick County

This letter is written responding to your request for the opinion of this office upon the following questions:

1. Is the provision in Section 21–917 of the South Carolina Code requiring ownership of property and presentation of tax receipts of persons voting in elections to levy school taxes constitutional?
2. Do absentee voting privileges apply to such elections?
3. May the School Board of Trustees appoint precinct managers to supervise elections to levy school taxes?
4. Is it necessary that persons own property and present tax receipts as a qualification to act as precinct managers?
5. Is an abstract of the taxpayer list sufficient proof of payment of taxes as required by Section 21–917?

Answering Question 1, we advise that an opinion of this office dated March 7, 1962, stated that the requirement of property ownership as a condition for voting privileges in an election to raise school taxes was unconstitutional, citing from the case of *Cothran v. West Dunkin Public School District*, 189 S. C. 85, 200 S. E. 95. (A copy of the opinion is enclosed.) This opinion is supported by the case of *Kramer v. Union Free School District*, 395 U. S. 621, 89 S. Ct. 1886; *Cipriano v. City of Houma*, 395 U. S. 701, 89 S. Ct. 1897; *City of Phoenix, Arizona v. Kolodziejcki*, 399 U. S. 204, 90 S. Ct. 1990.

Answering Question 2, we advise that Section 21–917 of the South Carolina Code requires that elections to levy school taxes are to be conducted as are general elections and special elections under Title 23 of the Code. Chapters 7, 7.1 and 7.2 of Title 23 (Sections 23–441, et seq.) of the Code provide for absentee registration and voting for certain persons; namely, members of the Armed Forces, students, etc. We therefore advise that absentee voting privileges apply in said elections.

Answering Question 3, we must advise that Section 21–917 of the Code specifically appoints the School Board of Trustees as managers of special elections to levy school taxes. However, Sections 23–391 and 23–400 require that special elections as defined in Section 23–2, (which includes elections to levy school taxes held pursuant to Section 21–917), are to be conducted and managed by a Board of Election Commissioners appointed by the Governor. The subsequently enacted legislation (Sections 23–391 and 23–400) relating to the conduct of elections are, in the opinion of this office, the governing acts under which such elections must be conducted and the conflicting provisions of Section 21–917, specifically relating to the appointment of precinct managers, should be deemed to have been repealed by the later legislation. *City of Spartanburg v. Blalock*, 223 S. C. 252, 75 S. E. 2d 361. We therefore advise that the School Board does not have the authority to appoint precinct managers and the appointments must be made by the County election commissioners appointed for such purpose.

*2 Answering Question 4, this office advises that Section 23–400 of the Code, as amended, requires persons to be registered to vote to act as election managers. No other qualifications are named. Whether property ownership qualifications could be required following the decisions set out herein is questionable. We therefore conclude that the ownership of property, not being a statutory requirement, was not intended as a qualification for election managers.

In answer to Question 5, we have advised that the provisions in Section 21–917 relating to ownership of property and production of tax receipts are unconstitutional, eliminating any further proof of property ownership as a voting privilege qualification.

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