

1973 WL 26877 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1973

***1 re: Election of Directors—Beech Island Eural Community Water District**

Mr. Kelly F. Zier
Messrs. Garvin, Grant, Fox, Nuessle, Zier and Burkhalter
Attorneys at Law
Post Office Box 6516
North Augusta, South Carolina 29841

Dear Mr. Zier:

Thank you for your letter of September 7 concerning the election of Directors for the above Water District.

You state that in the past, elections for Directors of the District have been held without reference to the State Election laws and that on September 4, 1973, an election was conducted upon ballots which bore the notation: 'Vote For Two Only' and 'Ballot Will Be Questioned If Not Marked As Above On Final Count.' The effect of this was to require a full slate vote whereby each ballot would be required to bear the choice of no more nor less than two candidates. Two Directors were to be selected.

The Water District, according to the records in the Office of the Secretary of State, was formed under an Act which is now codified as Sections 59-626, et seq., Code of Laws, 1962, as amended. Reference to these sections indicate that the election conducted is advisory only, as the Directors serve under appointment by the Governor upon recommendation of the County Legislative Delegation, and the records in the Office of the Secretary of State reflect that appointments as Directors have been made by the Governor.

While I am of the opinion that the election need not be conducted in accordance with the South Carolina Election law, I am of the further opinion that the election, although advisory, is most probably invalid because of the requirement for full slate voting. The Supreme Court of South Carolina has recognized, in some similar circumstances, that advisory elections, when conducted in accordance with custom pursuant to the Election laws, are subject to the protections imposed by the Election law. The circumstances are not the same, in that the Water District election was not conducted pursuant to the State Election law, but it was conducted with the inclusion of the full slate requirement, and that requirement has been invalidated by a three-judge court of this State in Stevenson v. West. This leads me to the view that the election included a procedure which has been found to be constitutionally invalid. I assume that the election, although advisory, is tantamount to selection for appointment by the Governor, and if this is not a correct assumption, a different conclusion from that herein expressed would be indicated.

I am therefore of the opinion that the election procedure followed could be challenged successfully on constitutional grounds because of its full slate vote requirement.

Very truly yours,

Daniel R. McLeod
Attorney General

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