

1972 WL 25506 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 11, 1972

**\*1 Re: Special election in Ware Shoals held to fill two vacancies on town council**

The Honorable A. C. Jones  
Mayor  
Town of Ware Shoals  
P. O. Box 510  
Ware Shoals, South Carolina 29692

Dear Mayor Jones:

Several inquiries have been received by this office concerning whether or not a run-off election will have to be held because none of the candidates received a majority of the votes cast in the special election held in Ware Shoals on January 4, 1972, to fill two vacancies on town council. We have decided to make our views on the subject available to the Town in hopes that this will eliminate possible confusion or misunderstandings that replies to private inquiries might give rise to.

Were the election of January 4, 1972, a party primary election, there is little or no question but than a run-off election would be in order because none of the ten candidates received a majority of the votes cast. See Section 23-496, Code of Laws of South Carolina, 1962. However, the election in question was a special election held pursuant to Section 47-203 to fill vacancies on the council, and there is no provision for a run-off election in such an election when none of the candidates receives a majority of the votes cast. The general rule is that absent constitutional or statutory provisions to the contrary, a plurality and not a majority is sufficient to elect. 29 C.J.S. Elections, Section 241. This has been the position of our office on prior occasions.

Additionally, it is probable that the provisions of Section 47-215 would be applicable to special elections in towns of over one thousand inhabitants (which would include Ware Shoals), as well as general elections. Specifically, it provides that ‘. . . the persons receiving the highest number of votes for aldermen (councilmen), in number equal to the number of aldermen to be chosen, shall be declared elected to that office.’ Section 47-203 states that elections to fill vacancies shall be held in the same manner as provided in Chapters 4 (towns and cities of between one thousand and five thousand inhabitants) and Chapter 5 (towns and cities of over five thousand inhabitants) of Title 47, and Section 47-215 is applicable to municipal elections provided for in Chapter 4 of Title 47. Further, the first sentence of Section 47-215 seems to make its provisions applicable to ‘any municipal election,’ and it is arguable that this is broad enough to include special as well as general elections.

It is the opinion of this office that a run-off election is not authorized in the Ware Shoals situation, and that the two candidates who received the highest vote totals in the January 4, 1972, special election should be declared elected.

Very truly yours,

Robert W. Brown  
Assistant Attorney General

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