

1972 WL 25181 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 18, 1972

***1 Re: Ineligible candidate in town council election does not affect result of the election where such candidate received the sixth highest vote total and only four positions were to be filled.**

Hon. A. B. Setzler
Mayor pro tem
Town of Carlisle
Carlisle, South Carolina 29031

Dear Mayor Setzler:

The Executive Director of the State Election Commission forwarded your letter of January 13, 1972, to this office for reply.

As I understand the inquiry, four councilmen were to be elected in Carlisle in the election held on January 11, 1972, and eight candidates offered. After the election, it was discovered that the candidate receiving the sixth highest vote total was not a qualified elector because of not being registered, and hence, he was not a qualified candidate. Your question is: What is the effect of the ineligible candidate upon the Council election?

On questions involving municipal and county problems, it is the policy of this office that municipal and county attorneys should, in the first instance, be called upon. In the event that such counsel desires the assistance of this office, we are always happy to assist in any way possible. If the Town of Carlisle has a town attorney, we would request that he be consulted about the matter at hand; and the comments that follow, if at variance with his advises, should be disregarded.

We know of no specific law in this State on the problem you have raised and apparently our Supreme Court has not addressed itself to the subject. The general rule in the United States is that votes cast for a deceased, disqualified or ineligible candidate, although ineffective to elect such person to office are not to be treated as void or thrown away but are to be counted in determining the result of the election as regards the other candidates. See [133 A.L.R. 319, 320](#); 26 Am. Jur. 2d, § 293, 29 C.J.S., Elections, § 243. Under this rule, if candidate number six in the Carlisle election had received one of the four highest vote totals, he could not have been eligible to hold office, but the three other candidates with the highest vote totals would have been elected. A special election would have had to have been held to elect a fourth councilman. However, where as here, the ineligible or disqualified candidate did not receive a vote total that would have otherwise elected him to office, it is our opinion that his ineligibility or disqualification has no effect upon the election in question.

Our opinion is that the four candidates with the highest vote totals should be declared elected in the election for Town Council in Carlisle.

Very truly yours,

Robert W. Brown
Assistant Attorney General

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