1972 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3289, 1972 WL 20433

Office of the Attorney General

State of South Carolina
Opinion No. 3289
March 27, 1972

***1 Municipal Democratic Party primary winner in race for City Council entitled to be his party's candidate in the general election although he had not been registered thirty days in his precinct prior to the primary, but will have been registered more than thirty days at the time of the general election.**

Democratic Party Chairman
City of Laurens

An inquiry has been received concerning the eligibility of a recent winning City Council candidate in the Laurens Democratic Primary to be declared the Party's nominee in the Municipal General Election to be held in June.

The facts appear to be as follows: Primary Candidate Pierce defeated Primary Candidate Beasley in the race for Alderman from Ward No. 4, the Primary being held on March 14, 1972. Candidate Pierce was formerly a resident of the City of Clinton and registered in Ward 1 in that City He moved to Laurens more than two years prior to the subject Primary, residing in Ward No. 4, but failed to change his registration until March 13, 1972, which was the day before the Primary and over a week after he had filed for the race in question. Thus, on March 14, Primary Day, Candidate Pierce had a registration certificate which was less than thirty days old, had not been properly registered at the time he filed for the office, but would have a registration certificate more than thirty days old at the time of the General Election in June.

This office has previously ruled, in a published opinion, in accordance with what it believed to be the State law, that the qualification of a candidate is determined as of the time of an election, and that a candidate in a municipal general election need not be a registered elector at the time his nominating petition is submitted if he will be qualified (registered) at the time of the general election. A copy of this opinion is attached. In another municipal primary race where the nominating process was other than by primary election, we have recently issued an opinion similar to the 1968 Opinion concerning petition candidates. A copy of that opinion is attached.

Article XVII, Section 1, of the State Constitution specifies that 'No person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector.' As the cases cited in the 1968 Opinion, attached hereto, point out, the term 'qualified elector' means, in short, 'registered elector.'
'In the case of State v. Mittle, 120 S. C. 535, 536; 113 S. E. 338, 339, we find:
'A qualified elector is a citizen, male or female, of the State, 21 years of age and upwards, not laboring under the disabilities named in the Constitution and possessing the qualifications required by it, * * * among which, as this Court has held in New v. Railroad Co., 55 S. C. 90; 32 S. E. 828, is registration; so that in short a qualified elector is a registered elector . . .." *In Re State Ex Rel Munn*, et al., 129 S.C. 476, 125 S. E. 32.

***2** Although the suffrage Article of the Constitution (Article II) has recently been revised [see 1971 Act No. 277 (57 States. 319)] and the Twenty-Sixth Amendment has preempted our State constitutional age requirements, the qualifications of an elector presently are essentially the same. Confer Article II, Sections 3 and 4.

There are cases in South Carolina which distinguish between being a 'qualified elector' and being a 'qualified voter.' See *State Ex Rel Munn et al., supra*, and *State Ex Rel Harrelson v. William Mayor, et al.*, 157 S. C. 290, 154 S. E. 164. In the *Munn* case, W. DePass, Jr., had won the Kershaw Democratic Party nomination to the House of Representatives on September 9, 1924. Prior to the November General Elections, the plaintiffs in the action sought to enjoin the Democratic Party from placing DePass' name upon the ballot in the General Election upon the grounds that he had not paid his poll tax. The Supreme Court pointed out that the payment of taxes was made a condition to voting under the State Constitution and had nothing to do with Mr. DePass' qualifications as an elector; and it held that he was a qualified candidate:
'. . . If any elector of either class, within the period in which he remains a qualified elector, desires to vote, he must comply with the requirements as to the payment of taxes; but his status as a qualified elector is not destroyed by his nonequipment for voting in a particular election . . ..' 129 S. C. 476, 478, 125 S. E. 32, 33.

If possession of a thirty-day old voting certificate ever was an additional qualification to being an elector in contradistinction to being a condition for voting, it was due to former Section 11 of Article II, which provided:
'The registration books shall close at least thirty days before an election, during which time transfers and registrations shall not be legal . . ..'

The case of Gunter v. Gayden, 84 S. C. 48, 65 S. E. 948, held that Article II, Section 11's requirement meant that the registration books must be closed thirty days before each election, but, for any other election the books may be kept open during the thirty-day period, and that the votes of those registered within thirty days of an election would be illegal.

If the thirty-day closing requirement of the Constitution could be construed as an additional 'qualification' to being an elector, then, as a constitutional requirement it was deleted in the 1971 Revision of Article II mentioned earlier.

Where, then, is the requirement that the registration books be closed thirty days prior to an election? The answer is that there are statutory requirements which are worded similarly to old Article II, Section 11, and which clearly seem to be legislative implementations of this bygone provision. See Sections 23–66, 23–72.2 and 23–69.

These statutes still stand after the election of the constitutional provision, but do they have the effect of imposing a qualification for public office—i. e., that in addition to being a registered elector a potential office holder must possess a thirty-day old registration certificate? In McLure v. McElroy, et al., 211 S. C. 106, 44 S. E. 2d 101, our Supreme Court made the following distinction between constitutional and statutory officers insofar as qualifications for office are concerned:
***3** '. . . all officers, constitutional and statutory and whether elected or appointed, must be qualified electors, and the legislature may not add other conditions for eligibility to those specified in the constitution for election or appointment to constitutional offices, that is those offices created by the constitution; but as to offices established only by legislative acts, the General Assembly may prescribe other and additional qualifications which are reasonable in their requirements . . ..'

It is clear that the office of Laurens City Councilman is not a constitutional office but is one created by the Legislature; however, even if the legislature could place additional conditions of eligibility on this office (as it has done by apparently requiring aldermen to reside in the ward they are elected from even though elected at large—see Section 47–55), the statutory provisions, in our opinion, relating to thirty day closing, relate only to voting by citizens and not to qualifications for public office. By their terms they seem to refer, when read together, only to eligibility to vote, and we have heretofore demonstrated that under some conditions it is possible to be elected in an election at which one is not eligible to vote.

Nor can it be contended that the Legislature can extend the constitutional qualifications for suffrage and hence for holding public office. See portion of Circuit Judge's Decree approved by the Supreme Court in *Wright v. Board of Convassers*, 76 S. C. 574, 585, 592, 57 S. E. 536, 539, 542 [1] (also see Justice Woods dissent, 76 S. C. 574, 593, 57 S. E. 536, 542). [2] Your writer's

view is that to construe Sections 23–66 and 23–72.7 as going to the qualifications of an elector instead of eligibility to vote would be an unwarranted extension of the constitutional qualifications for suffrage, especially since the 1971 Constitutional Revisions, which eliminated Article II, Section 11.

It is the opinion of this office that a candidate in a municipal Democratic Party primary is eligible to qualify for his party's nomination in the general election where he is properly registered, even though his registration certificate is less than thirty days old when the primary is held but will be more than thirty days old at the time of the general election. This is because of our view that the thirty day closing law, as it now exists, constitutes a pre-requisite to voting but does not go to the qualifications of an elector. Thus a person who has met the residency and other qualifications prescribed by the Constitution is a 'qualified elector' and entitled to be elected to public office even though he cannot vote in the primary which nominates him because his voting certificate is less than thirty days old. We do not find anything in the statutes pertaining to Party membership (see Section 23–253), or the State Party Rules which incline us to a contrary opinion, and we understand the Laurens Municipal Club's rules have no bearing on the problem.

***4** There are other considerations. Candidate Pierce without question will be a 'qualified elector' on the date of the general election even if we assume he was not at the time of the primary. As we have stated before, it is our view that a candidate's qualifications as an elector are determined as of the time of the election. See 1968 Op. Atty. Gen., p. 101, *State Ex Rel Harrelson v. Williams, Mayor*, 157 S. C. 290, 154 S. E. 164. Transposing the facts in the 1968 Opinion to the Laurens situation, suppose there was one petition and one convention candidate for alderman from Ward No. 4 in Laurens who would be opposing the Democratic Party's nominee, Pierce. Further assume that at the time their petition was submitted or their nominations received from the City Convention, these two candidates were not qualified electors but would be qualified by the date of the General Election. If the law is that the General Election date is the crucial date, then no one could argue that the petition and convention candidates were not eligible to be elected. Why then should the Democratic nominee, Pierce, be penalized when he too will be, under any interpretation, of the thirty-day closing statutes, a 'qualified elector' on the date of the General Election. It is our opinion that it is the date of the general election and not the primary election date which is crucial in determining a candidate's qualifications as an elector, and we believe our Courts would so hold if the question was squarely raised.

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Footnotes

1 '. . . *It is true that the legislature can neither extend nor restrict the qualifications prescribed by the Constitution*. But I do not think that the insertion of these words amounts to any extension of the constitutional qualifications. It is merely a regulation of the right of suffrage, by requiring proof of the constitutional qualifications, as a prerequisite to voting, and safe guard against illegal voting, which the legislature had the right to enact.' [Emphasis ours] 76 S. C. 574, 585, 57 S. E. 536, 539.

2 '. . . But obviously no statutory enactment can add to the constitutional qualifications for suffrage . . ..' 76 S. C. 574, 593, 57 S. E. 536, 542.

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