

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3636
FACSIMILE: 803-253-6283

June 2, 1993

The Honorable Scott Richardson
Representative, Beaufort County
414-D Blatt Building
Columbia, SC 29211

Dear Representative Richardson:

You have requested the opinion of this Office as to several questions concerning S.C. Code Ann. § 59-17-20 (1990) which provides for the alteration or division of school districts. Your questions are separately stated and addressed below.

1. "If either of the conditions set forth in Paragraph (2)(b) or (2)(c) have been satisfied, must the written approval of the senator and the entire house delegation from Beaufort County also be given before the county board of education can divide the school district into two (2) or more new school districts?"

No. The approval of the delegation is not a requirement that must be met if the conditions set forth in Paragraphs (2)(b) or (2)(c) have been satisfied. Williams v. Marion County Board of Education, 234 S.C. 273, 107 S.E.2d 640 (1959).

2. "Do the provisions of Paragraph (2)(c) only apply to school district consolidations and not to the division of an existing school district into two (2) or more new districts?"

No. The provisions of Paragraph (2)(c) apply to division of an existing school district into two or more school districts. See Ops. Att'y Gen. April 9, 1987, and November 30, 1981; see also § 59-17-40.

3. "...In preparing the petition described in Paragraph (2)(c) of the above-referenced statute, must one-third (1/3) of all active and inactive electors on the voter registration lists for Beaufort County be secured or must only one-third (1/3) of the active electors execute such a petition?"

Persons purged from the registration list should not be counted for the purposes of determining qualified electors under § 59-17-20. Ops. Att'y Gen. August 21, 1980 (copy enclosed).

The Honorable Scott Richardson
June 2, 1993
Page 2

However, persons deleted because of their voting record may be reinstated to the lists upon their requests as provided under applicable State law. See Ops. Att'y Gen. August 21, 1980.

4. "Under Paragraph (2)(c) [of] the above-referenced statute, must at least one-third (1/3) of the qualified electors in each of the new school districts to be formed sign the petition, or must one-third (1/3) of the total number of qualified electors in Beaufort County sign the petition? Along these same lines, if the number of electors in the southern half of Beaufort County that execute the petition equal or exceed one-third (1/3) of the total number of qualified electors in Beaufort County, will a petition in such situation fulfill the requirements of this section of the statute?"

When a single district is sought to be divided, the "qualified electors" for the purposes of determining whether one-third have signed under Paragraph (2)(c) constitute the electorate in the entire school district, which in this case is Beaufort County. Ops. Atty. Gen. November 24, 1969. In other words, one-third of the qualified electors in the entirety of Beaufort County must sign the petition under Paragraph (2)(c). The statute contains no restrictions as to the geographical location of those electors within Beaufort County. Therefore, all of the persons signing the petition may reside in the southern half of Beaufort County provided that their number equals one-third of the total qualified electorate of that county.

5. "If the conditions set forth in Paragraph (2)(c) are satisfied, can the county board of education refuse to divide Beaufort County into two (2) or more school districts even though the petition and referendum conditions have been fulfilled?"

Yes. A case considering a predecessor version of § 59-17-20 held that the county board was not required to form a new district even when petition requirements are fulfilled. Kearse v. Lancaster, 172 S.C. 59, 172 S.E. 767 (1934). The authority of the county board to determine the matter was also indicated in a case considering the present version of § 59-17-20. Powers v. State Educational Finance Commission, 222 S.C. 433, 73 S.E.2d 456, 461 (1952). These conclusions are consistent with the plain meaning of the provisions in Paragraph (2) for the "authorization of the county boards of education" (emphasis added) as to which the petition and referendum requirement are conditions. See Detyens v. Maquire, 284 S.C. 194, 324 S.E.2d 648 (1984).

The Honorable Scott Richardson
June 2, 1993
Page 3

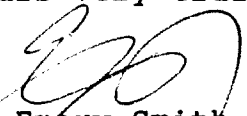
6. "If the petitions described in Paragraph (2)(c) are secured and submitted to the county board of education, must the county board of education hold a referendum on this issue, and if the county board of education is required to hold such a referendum, is there a time frame in which such referendum must be held?"

Because the county board is not required to divide the school district even if a referendum passes, it is not required to hold a referendum on this issue. See response to question 5, *supra*. The Legislature is presumed not to pass legislation having an absurd result. See *Hamm v. State*, 287 S.C. 180, 336 S.E.2d 470 (1985). Because the Legislature does not require the county board to divide a school district even when a referendum to do so passes, holding the referendum would serve no statutory purpose if the county board had decided that it would not approve the division upon passage.

If a referendum is scheduled, I am not aware of any statutory restriction as to when the referendum must be held; however, I suggest that the lapse of time be no more than what might be considered reasonable to avoid any claim that the petition is stale. Cf. § 7-11-70 (Supp. 1992). (As to a candidate's nominating petition for office, the qualified registered electors "...must be the number of registered electors of such area registered 120 days prior to the date of the election...").

I hope that the above information is of some assistance to you. If you have any questions, please do not hesitate to call me.

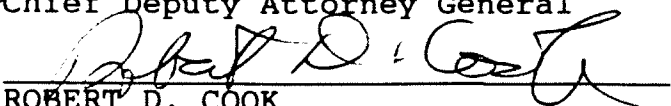
Yours very truly,


J. Emory Smith, Jr.
Deputy Attorney General

JESjr:ppw
Enclosure
CC: 52 North Calibogue Cay
Hilton Head Island, SC 29928

REVIEWED AND APPROVED BY:


JAMES PATRICK HUDSON
Chief Deputy Attorney General


ROBERT D. COOK
Executive Assistant for Opinions