

The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3680

February 16, 1989

James B. Ellisor, Executive Director  
South Carolina Election Commission  
Post Office Box 5987  
Columbia, South Carolina 29250

Dear Mr. Ellisor:

Your recent letter addressed to Attorney General Medlock has been referred to me for reply. You have asked us to review this Office's November 16, 1984, opinion number 84-134 and inform you if we still concur with its conclusion.

A review of this opinion indicates that it is erroneous and, therefore, we would withdraw this opinion. It is our understanding that you concur in our conclusion. The 1984 opinion states that

... a candidate for elective office, having been certified as the winner of the election by the appropriate county board of canvassers, may take the oath of office before determination of an appeal or protest pending before the State Board of Canvassers. It is the opinion of this Office that the certified winner is entitled to take the oath of office, the appeal or protest notwithstanding.

The fallacy in this conclusion is that the winners are not certified by the County Election Commission. South Carolina Code of Laws, 1976, Sections 7-17-80; 7-17-240. The winners of an election are certified by the State Election Commission to the Secretary of State. South Carolina Code of Laws, 1976, Sections 7-17-240; 7-17-250; 7-17-290. They may not take the oath of office until the Secretary of State has in his Office the certification that the person is the winner of the election. South Carolina Code of Laws, 1976, Sections 7-17-300, 7-17-340.

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Therefore, a person should not be able to take the oath of office until he is certified to the Secretary of State as the winner of that race.

Sincerely,



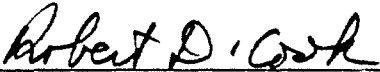
Treva G. Ashworth  
Senior Assistant Attorney General

TGA:bvc

REVIEWED AND APPROVED BY:



EDWIN E. EVANS  
CHIEF DEPUTY ATTORNEY GENERAL



ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS

1/ A possible exception to this general rule would be members of the General Assembly. Article III, Section 10 of the South Carolina Constitution expressly provides that the term of office for members of the General Assembly will begin on the Monday following the election.