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# The State of South Carolina



## Office of the Attorney General

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May 9, 1988

The Honorable Benjamin E. Thrailkill, Jr.  
Member, House of Representatives  
434-D Blatt Building  
Columbia, South Carolina 29211

Dear Representative Thrailkill:

You have asked for the opinion of this Office as to whether, in making appointments to the Horry County Board of Registration and the Horry County Election Commission, there is any legal requirement that the appointments so made reflect the various geographic areas of the county. In other words, in a county in which there are several municipalities or other geographic areas with a significant proportion of the population of the county, is it legal for all appointees to reside within the same geographic area of the county? Your concern is that the board or commission is to serve the county as a whole and that the membership on the board or commission should be as representative of the population of the county as possible.

### Board of Registration

Section 7-5-10, Code of Laws of South Carolina (1976), provides the following with respect to appointment of boards of registration:

Between the first day of January and the fifteenth day of March in every even-numbered year the Governor shall appoint, by and with the advice and consent of the Senate, not less than three nor more than five competent and discreet persons in each county, who shall be citizens and qualified electors thereof and who shall be known as the board of registration of \_\_\_\_\_ County. The members so appointed shall be subject to removal by the Governor for incapacity, misconduct or neglect of duty.

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The qualifications specified by this statute state that those to be appointed must be competent, discreet, citizens of the relevant county, and qualified electors of the county.

#### County Election Commission

Section 7-13-70 of the Code provides for the appointment of commissioners of election for each county. In relevant part, that section provides:

For the purpose of carrying on general or special elections provided for in § 7-13-10 the Governor shall, at least thirty days prior to any such election, appoint for each county not less than three nor more than five commissioners of election upon the recommendation of the Senator and at least half of the members of the House of Representatives from the respective counties. ...

While no qualifications are specified in Section 7-13-70 for county election commissioners, Article XVII, Section 1 of the Constitution of the State of South Carolina would require the commissioners to "possess the qualifications of an elector." A residency requirement in the appropriate county may also be read into this statute. See Article II, Section 4 of the State Constitution and Section 7-5-120 of the Code.

#### Discussion

In construing the above-cited statutes in light of your question, it is necessary to ascertain and effectuate legislative intent if it may be reasonably determined. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). When words used in a statute are clear and unambiguous, courts must apply the literal meaning of such words. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). Any interpretation other than a literal one, in the absence of ambiguity, would have the effect of amending the statute. Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977).

The literal language of the above-cited statutes does not require in either instance that appointees to a county board of registration or county election commission reflect the geographic areas of a county or the distribution of population within the county.

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A review of statutes governing the appointments of various boards or commissions of the State of South Carolina or its political subdivisions reflects that in some instances, the General Assembly did not impose such a geographic residency requirement. See, for examples, Sections 5-31-210 and 5-31-240 of the Code (municipal commissions of public works); Section 6-7-360 (local planning commissions); Section 6-7-740 (zoning boards of appeals or boards of adjustment); Section 6-13-30 (rural community water districts); Section 43-3-10 (county boards of social services); Section 7-3-10 (State Election Commission); Section 48-27-20 (State Board of Forestry); Section 44-3-10 (municipal boards of health); and Section 44-9-30 (South Carolina Mental Health Commission), among others.

In numerous other instances, however, the General Assembly has imposed geographic residency requirements or restrictions. A good example is Section 4-9-35, as to county library boards, which provides in part (B) that "[t]o the extent feasible, members shall be appointed from all geographical areas of the county." See also Section 58-3-20 (Public Service Commission); Section 5-15-20 (city council members, sometimes required to reside in particular wards); Section 4-9-90 (county council members, sometimes must reside in districts under single member district scheme); Section 43-25-10 (South Carolina Commission for the Blind); Section 43-21-10 (South Carolina Commission on Aging); Section 44-15-60 (community mental health boards, geographic representation in proportion to contribution to the budget); Section 44-21-830 (county mental retardation boards, in proportion to county's share of total population of counties served); and many others.

The express inclusion of such a geographic residential requirement for many boards and commissions of the State and its political subdivisions would impliedly exclude that type of requirement from statutes governing appointments of boards and commissions in which that type of requirement is not mentioned. See Home Building & Loan Association v. City of Spartanburg, 185 S.C. 313, 184 S.E. 139 (1938). Thus, we are of the opinion that Sections 7-5-10 and 7-13-70 do not require the appointees to the county boards of registration and the county election commission to reflect the geographic residential composition or population areas of the particular county.

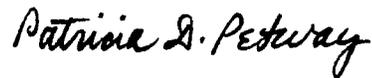
In so reaching this conclusion, we are mindful of the fact that each of these boards serves the county as a whole. While it may be argued that the fair or equitable practice would be to appoint members to represent the broadest segments of geography or population of the county as possible, it is not legally or

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statutorily required. Of course, the General Assembly could amend either or both of the statutes, to impose such a requirement, if the General Assembly wished to do so. Such an amendment must necessarily be made by the General Assembly rather than by an opinion of the Attorney General.

With kindest regards, I am

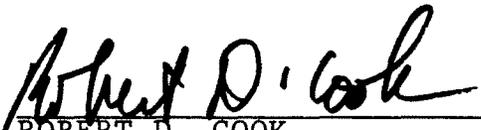
Sincerely,



Patricia D. Petway  
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:



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ROBERT D. COOK  
EXECUTIVE ASSISTANT FOR OPINIONS