

2016 WL 2607246 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 1, 2016

\*1 Ms. Marci Andino  
Executive Director  
South Carolina Election Commission  
1122 Lady St. Suite 500  
Columbia, SC 29201

Dear Ms. Andino:

We are in receipt of your opinion request concerning security for county voter registration and elections offices. Specifically, you explain county offices in South Carolina serve not only as voter registration offices, but also serve as absentee precincts and barrier-free precincts in each county concluding, “county offices are considered ... polling places.” In light of this, you ask whether Section 7-13-140 of the Code, which provides election managers with the “full authority to maintain good order at the polls and to enforce obedience to their lawful commands during an election and during the canvass and counting of the votes” also allows election managers to “utilize armed peace officers” to maintain order at county voter registration and elections offices without offending Section 7-13-160 of the Code.<sup>1</sup> Our response follows.

#### I. Law/Analysis

As detailed above, Section 7-13-140 of the Code provides election managers with the “full authority to maintain good order at the polls and to enforce obedience to their lawful commands during an election and during the canvass and counting of the votes.” S.C. Code Ann. § 7-13-140 (1976). Continuing, Section 7-13-140 adds that “[a]ll peace officers shall answer all such calls for help in preserving the peace as may be made by the managers of election.” This evidences an obvious policy in favor of maintaining order at polling places as the failure or refusal to do so is a criminal offense punishable by fines and/or imprisonment. See S.C. Code Ann. § 7-13-150 (“Any person who, when summoned or called upon by peace officers shall fail or refuse to assist him in maintaining the peace and good order at the polls shall be fined in a sum not to exceed one hundred dollars or imprisoned not to exceed thirty days.”).

Despite Section 7-13-140 and 7-13-150's obvious policy of maintaining order in polling places, Section 7-13-160 of the Code provides limitations on when and how peace officers may be used to maintain order in polling places. In particular, Section 7-13-160 explains peace officers, when called to maintain order, are only “allowed to come within the polling place” when “summoned into it by a majority of the managers.” S.C. Code Ann. § 7-13-160. Thus, while Section 7-13-160 reinforces Section 7-13-140's mandate that election managers possess “full authority to maintain good order at the polls” it balances this authority by requiring the agreement of a “majority of the managers” in order to summon a peace officer. Thus, unless a peace officer is voting, his or her presence at a polling place is determined in the discretion of a majority of election managers—a protection that we believe is designed to alleviate concerns of voter intimidation.

\*2 With this in mind, we now return to your question—whether county voter registration and elections offices may utilize armed peace officers for security purposes. We believe that they can.

Sections 7-13-140 and 7-13-160 clearly entrust election managers with the discretion to determine when peace officers are needed to maintain order at a polling place and put in place a procedure for when to request a peace officer inside of a polling place. It appears the reason for this discretion is to ensure each polling place strikes a balance between

maintaining order so as to provide voters with a safe and secure place in which to cast their ballot, while at the same time ensuring voters are not intimidated by too much of a police presence within a given polling place. Since county voter registration and elections offices serve as polling places for casting absentee ballots, we believe the same rationale should apply to such offices during the timeframe they serve as polling places, including the time in which the canvass and counting of the votes occur as established in Section 7-13-140. See S.C. Code Ann. § 7-15-410 (2015 Supp.) (“In each county there must be established an absentee voting precinct located in the office of the county board of voter registration and elections.”); S.C. Code Ann. § 7-15-330 (2015 Supp.) (“[C]ompleted applications must be returned to the county board of voter registration and elections in person or by mail before 5:00 p.m. on the fourth day before the day of the election. Applications must be accepted by the county board of voter registration and elections until 5:00 p.m. on the day immediately preceding the election for those who appear in person and are qualified to vote absentee pursuant to § 7-15-320.”). In fact, were we to conclude otherwise, it would seem a voter casting an absentee or barrier free ballot at a county voter and registration office could potentially be subject to the exact impediments Sections 7-13-140 and 7-13-160 were designed to prevent—voter intimidation due to a lack of order, or voter intimidation due to the appearance of too much order.

Moreover, there is nothing contained within either statute indicating the Legislature intended Section 7-13-140 and 7-13-160's anti-intimidation protections to be limited to traditional polling places on election days. To the contrary, an election manager's authority to maintain order under Section 7-13-140 appears to begin at the start of an election and continue until all votes are counted. See S.C. Code Ann. § 7-13-140 (providing election managers with the “full authority to maintain good order at the polls and to enforce obedience to their lawful commands during an election and during the canvass and counting of the votes.”). Therefore, since absentee ballots are cast as part of an election, but absentee voting begins prior to an election day (and in certain circumstances extends past an election day under Section 7-15-330), we believe an election manager's authority under Section 7-13-140's “during an election” language is not limited to an election day, but would include any time in which a ballot may be cast or counted. Accordingly, we believe Sections 7-13-140 and 7-13-160 should be read in a manner which gives full effect to the Legislature's obvious intent of preventing voter intimidation for all voters and therefore conclude county voter registration offices, like other polling places, may, at the discretion of a majority of election managers, utilize armed peace officers for security purposes.

## II. Conclusion

\*3 In conclusion, it is the opinion of this Office that election managers may, if they choose, utilize armed peace officers to provide security at county voter registration and elections offices so long as the decision to do so is done in accord with the terms of Sections 7-13-140 and 7-13-160 of the Code. This means the decision to request a peace officer must be a decision made by the “majority of the managers” as provided for in Section 7-13-160, and must be requested during the period of time in which election managers are authorized to “maintain order at the polls” in accordance with the terms of Section 7-13-140's “during an election and during the canvass and counting of votes” language. Assuming these statutes are followed, we believe the decision of whether to request peace officers at county voter registration and election offices, like other polling places, rests in the discretion of the individuals serving as election managers.

Sincerely,

Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook  
Solicitor General

Footnotes

- 1 Section 7-13-160 of the Code addresses the presence of peace officers at polling places stating:  
No sheriff, deputy sheriff, policeman or other officers shall be allowed to come within the polling place except to vote *unless summoned into it by a majority of the managers*. On failure of any sheriff, deputy sheriff, policeman or other officer to comply with the provisions of the preceding sentence, the managers of election, or one of them, shall make affidavit against such sheriff, deputy sheriff, policeman or other officer for his arrest.  
S.C. Code Ann. § 7-13-160 (1976) (emphasis added).

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