

1975 WL 28905 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 10, 1975

*1 T. H. Rawls, Jr., Esquire
Post Office Box 856
Lexington, South Carolina 29072

Dear Mr. Rawls:

On June 3, 1975, elections were conducted in Lexington County to elect school trustees in various school districts of that County. Shortly after the elections, the County Board of Education, pursuant to Act No. 1181 of 1974, met, canvassed the ballots, and declared the results thereof. Thereafter, a defeated candidate protested one of those elections. None of the nominees has been commissioned as yet by the County Board of Education as it is authorized to do by that act.

The issue presented to us by you as County Attorney is which public body is authorized to conduct the hearing, the County Board of Education or the County Board of Canvassers.

In South Carolina, as elsewhere, the procedure by which election results may be contested is prescribed by statute (26 AM.JUR.2d § 318 at 143); and in this State that procedure is regulated by Sections 23-453 et seq. of the South Carolina Code of Laws. Section 23-453 provides in part:

The County Boards shall decide all cases under protest or contest that may arise in their respective counties in the case of county officers and less than county offices. . . .

The office of school trustee is a 'less than county' office. Clearly, therefore, the County Board of Canvassers alone possesses the authority to entertain protests relating to school trustee elections in Lexington County. The authority of the County Board of Education, as was noted above, is limited to canvassing the ballots, declaring the results of the election and commissioning the winning candidates. It has no authority to hear election disputes.

We might add that inasmuch as the June 3, 1975, trustee election has been protested, the County Board of Education should not commission as a result of that particular election any nominee as a trustee until the protest procedures have been completed and a determination of the issues presented by the protest has been conclusively made.

Kindest regards,

C. Tolbert Goolsby, Jr.

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