



ALAN WILSON
ATTORNEY GENERAL

May 22, 2018

Ms. Marci Andino
Executive Director
State Election Commission
P.O. Box 5987
Columbia, SC 29250-5987

Dear Director Andino:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

The State Election Commission (SEC) respectfully seeks guidance concerning the clarification or revision of county boundaries under S.C. Code § 27-2-105 (Supp. 2014), the effective date of such changes, and the impact of such changes on the elections process, particularly with regards to voter registration.

As you are aware, § 27-2-105 sets forth a process by which county boundaries as defined in Chapter 3 of Title 4 are clarified or reestablished by the South Carolina Geodetic Survey (SCGS), part of the Office of Revenue and Fiscal Affairs. To summarize, that section provides that a revised or reestablished boundary takes effect after: the certification of a county boundary plat by SCGS; written notice to affected parties; a sixty calendar day window for an affected party to contest a certified boundary by filing an appeal with the Administrative Law Court; and the resolution of any such appeal.

As for the effective date of a revised county boundary, § 27-2-105(B)(6) states:

When the certified county boundary plat is no longer subject to appeal, the SCGS under cover of a letter signed by the Chief of the SCGS shall provide an appropriate revised boundary map to the Secretary of State, the South Carolina Department of Archives, and the register of deeds in each affected county. The date of the SCGS director's cover letter is the date the revised boundaries take effect.

(Emphasis added). The date of this cover letter is when the SCGS certified county boundary plat "takes effect for all purposes." § 27-2-105(B)(5). However, subsection (B)(7) states that "[w]hen all portions of a county boundary are resolved, the SCGS shall prepare a unique boundary description for counties with boundaries affected ... and forward that description in a form suitable for the General Assembly to amend county boundaries as described in Chapter 3, Title 4."

Notably absent from § 27-2-105 and any other statutory provisions is a clear expression of legislative intent as to the immediate impact of a revised county boundary's effective date on the county and precinct of registration for affected voters. By way of comparison, the SEC and county boards of voter registration and elections have historically transferred a voter's registration from one precinct to another in accordance with the provisions of Chapter 7 of Title 7 when legislation altering precinct boundaries within a county becomes effective.¹ Likewise, updates to voters' assigned election districts have been made only after the effective date of legislation or a court order. Moreover, legislation altering precinct or district boundaries is typically drafted so as to become effective after, and avoid interfering with, elections. A revised county boundary, however, does not alter the statutorily-defined precinct lines within a county,² and does not take into account the timing of elections with regards to its effective date.

For obvious reasons, county boundary revisions under § 27-2-105 can have a significant impact on the elections process, particularly on issues related to voter registration and the casting of ballots. Concerns over this impact are compounded when the process set forth in § 27-2-105 begins to encroach upon preparations for elections scheduled in the affected counties. For instance, there is currently a certified boundary project subject to appeal with the statewide primary fast approaching. With the passage of the legislative crossover deadline, legislation making corresponding changes to precinct boundaries in the affected counties is almost certainly delayed until the next legislative session. Uncertainty surrounding the outcome of any appeal and the eventual date of resolution place the affected counties and the SEC in a precarious position with regards to the registered voters who currently reside in the "certification zone" that may be subject to change between now and the primary election.

¹ See S. C. Code §§ 7-7-10 ("the voting precincts ... in the several counties of the State shall be designated, fixed, and established by the General Assembly"); 7-7-720(A) ("A person whose registration is transferred to another precinct by virtue of the provisions of this article must be notified by mail ... of the transfer"); 7-7-950 ("When a new voting precinct is established by law, the county board of voter registration and elections must transfer from the books of registration the names of electors registered to vote in other precincts as should register and vote in the new voting precinct and shall notify electors of the change of polling precincts").

² See S.C. Code §§ 7-7-30 to -530.

In the event this county boundary revision is suddenly no longer subject to appeal and "takes effect for all purposes" between now and the June primary, the SEC and affected counties need guidance on how to proceed. With ballot preparations already underway, and in light of the upcoming April 28 deadline for mailing ballots to military and overseas voters, the thirty-day deadline for registering to vote before the June 12 primary just weeks away, and the absence of legislative changes to the precincts of the affected counties, it is preferable from an election standpoint for any such county boundary revision to be recognized after the June primary and any resulting runoff elections. Otherwise construing a county boundary revision as effective sometime between now and the primary would likely create voter confusion and potential disenfranchisement issues, and could also result in a situation where the SEC is unable to make timely changes to the voting system reflective of such revisions. The issues create the potential for election protests which, if granted, would require that new elections be held at great expense to the SEC and county boards. In the absence of legislation clearly indicating an intent to the contrary, and consistent with the SEC's general policy of erring in favor of the voter, it is the SEC's position that any such boundary revision which "takes effect" for purposes of § 27-2-105 between now and June 12 should not be construed as affecting the current county and precinct of registration for voters.

When a county boundary line is revised by SCGS pursuant to S.C. Code § 27-2-105, is the effective date for moving voters to different counties and/or new precincts the date of the SCGS letter referenced in § 27-2-105(B)(6) or the effective date of legislation altering the county and precinct lines in accordance with S.C. Const. Art. VII, § 7, § 27-2-105(B)(7), and §§ 7-7-10 et seq.? If it is the date of the SCGS cover letter, the SEC and county boards are placed in a particularly precarious position on statewide general election years when a county boundary revision under § 27-1-105 becomes effective before the primary and without legislation making corresponding changes to precinct lines. Since the General Assembly will not have the opportunity to make such corresponding changes until the next legislative session, the law is unclear as to the location of registration for affected voters during the time of the statewide primary and general election.

Law/Analysis

In order to address when registered voters within a certification zone must be regarded as having been moved to a different county or voting precinct, the relevant statutory authority must be analyzed according to the rules of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent.

Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute “would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect.” Duke Energy Corp. v. S. Carolina Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) (“[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.”). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). The meaning of these statutes and their effect must be determined with reference to each other so as to “construe them together into one integrated system of law.” Op. S.C. Atty. Gen., 2000 WL 1347162 (Aug. 25, 2000). With these principles in mind, we turn to the relevant statutes and legislative acts to determine whether there is a conflict and, if so, how our state courts would likely resolve such a conflict.

Prior to its most recent amendment in 2014, Section 27-2-105 of the South Carolina Code of Laws read as follows:

Where county boundaries are ill-defined, unmarked, or poorly marked, the South Carolina Geodetic Survey on a cooperative basis shall assist counties in defining and monumenting the locations of county boundaries and position the monuments using geodetic surveys. The South Carolina Geodetic Survey shall act as a mediator between counties to resolve county boundary disputes.

S.C. Code Ann. § 27-2-105 (2007) (emphasis added). The statute directed SCGS to assist counties in defining the locations of their boundaries and to act as a mediator. Subsequently, 2014 Act No. 262, § 2 amended Section 27-2-105 to assign SCGS further duties. In relevant part, the General Assembly’s reasoning for expanding SCGS’s duties are detailed in the legislative findings as follows:

(5) that the South Carolina Geodetic Survey is the appropriate instrument to vest with the necessary authority to resolve county boundary issues.

(B) The General Assembly further finds that it is appropriate statutorily to allow the South Carolina Geodetic Survey, with appropriate procedural safeguards, administratively to adjust or otherwise clarify disputed or unclear boundaries. However, in providing the statutory administrative process and procedural safeguards in the amendments to Section 27-2-105 of the 1976 Code as contained in this act, the General Assembly in no way restricts the plenary authority of the

General Assembly by legislative enactment to adjust or otherwise clarify existing county boundaries.

2014 Act No. 262, § 1. These findings emphasize that SCGS's authority continues to be based on resolving county boundary disputes. While SCGS was tasked with administratively adjusting or clarifying "disputed or unclear boundaries," the General Assembly explicitly retained its plenary authority to provide legislative clarity. As amended, Section 27-2-105 now reads:

(A)(1) Where county boundaries are ill-defined, unmarked, or poorly marked, the South Carolina Geodetic Survey on a cooperative basis shall assist counties in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys. The South Carolina Geodetic Survey (SCGS) shall seek to clarify the county boundaries as defined in Chapter 3, Title 4. The SCGS shall analyze archival and other evidence and perform field surveys geographically to position all county boundaries in accordance with statutory descriptions. Physical and descriptive points defining boundaries must be referenced using South Carolina State Plane Coordinates.

(2) If there is a boundary dispute between two or more counties, the SCGS shall act as the mediator to resolve the dispute.

...

(4) For purposes of item (1), a certification for all or some portion of a county boundary means a plat signed and sealed by a licensed South Carolina Professional Land Surveyor and approved by the Chief of the SCGS.

(B)(1) An affected party disagreeing with a boundary certified by the SCGS may file a request for a contested case hearing with the South Carolina Administrative Law Court according to the court's rules of procedure. An affected party has sixty calendar days from the date of a written notice sent to the affected party to file an appeal with the Administrative Law Court.

...

(3) A "certification zone" means the actual territory in which the boundary certification changes from one affected county to another.

(4) The decision of the Administrative Law Court may be appealed as provided in Section 1-23-610.

(5) The certified county boundary plat described in subsection (A)(4) of this section takes effect for all purposes on the date provided in item (6).

(6) When the certified boundary plat is no longer subject to appeal, the SCGS under cover of a letter signed by the Chief of the SCGS shall provide an appropriate revised boundary map to the Secretary of State, the South Carolina Department of Archives, and the register of deeds in each affected county. The date of the SCGS director's cover letter is the date the revised boundaries take effect.

(7) When all portions of a county boundary are resolved, the SCGS shall prepare a unique boundary description for counties with boundaries affected by the operation of this section and forward that description in a form suitable for the General Assembly to amend county boundaries as described in Chapter 3, Title 4.

(C) Nothing in this section may be construed as limiting or in any way restricting the plenary authority of the General Assembly by legislative enactment to adjust or otherwise clarify existing county boundaries, however, these boundaries may have been established.

S.C. Code Ann. § 27-2-105 (Supp. 2017).

Section 27-2-105(A)(1) additionally tasks SCGS with seeking to clarify all county boundaries in accordance with statutory boundary descriptions rather than merely assisting counties and acting as a mediator between counties in boundary disputes. Further, Subsection (B) creates an administrative process for a contested case hearing where affected parties can challenge the boundaries certified by SCGS. Only after all portions of a county's boundary line have been resolved, Subsection (B)(7) directs SCGS to prepare a boundary description for the General Assembly to amend the boundary description in Chapter 3, Title 4.

In this Office's March 1, 2016 opinion to Richland County Attorney, Bradley T. Farrar, we were asked to interpret whether this amendment to Section 27-2-105 violated the South Carolina Constitution's reservation of the power to alter county boundary lines to the General Assembly. See S.C. Const. art. VII, § 7. The opinion concluded that Section 27-2-105 did not usurp the General Assembly's authority to alter county boundaries as follows:

[I]t is the opinion of this Office that a court will determine that South Carolina Code § 27-2-105 cannot be used to change Richland County's statutory boundaries as defined by legal description in § 4-3-460. Moreover, any such "clarification" by § 27-2-105 would be limited to the terms within the statute, i.e. as a mediator for a boundary dispute between counties or to assist a county where

boundaries are “ill-defined, unmarked, or poorly marked.” S.C. Code § 27-2-105, furthermore, we do not see how one could change the statutory legal description of Richland County as contained in South Carolina Code § 4-3-460 without compliance with South Carolina Constitution Article VII, Section 7, which includes an election by the qualified voters. Therefore, we believe a court will determine that South Carolina Code § 27-2-105 does not violate South Carolina Constitution Article VII, Section 7 where it does not change the statutory boundaries but only assists a county in clarification within the boundaries set by statute. ...

Op. S.C. Atty. Gen., 2016 WL 963699, at 4 (S.C.A.G. Mar. 1, 2016). It continues to be this Office’s opinion that the SCGS does not have the authority to alter a county boundary under 27-2-105, but is rather merely tasked “to clarify the county boundaries... in accordance with statutory descriptions.” Any such revision to county boundaries must be accomplished by legislative action taken by the General Assembly.

Moreover, the SCGS is not authorized to alter the State’s voting precincts. Former Chief Justice Jean H. Toal, sitting as a special circuit court judge for the Richland County Court of Common Pleas, explained that a separate body is charged with maintaining and verify maps of voting precincts as follows:

25. Mapping of political boundaries in South Carolina is the statutory responsibility of the South Carolina Revenue and Fiscal Affairs Office (“RFAO”) which is the successor to the South Carolina Office of Research and Statistics. RFAO has several divisions. These divisions include the Mapping and Census section, which includes several distinct sub-sections including the Office of Precinct Demographics, the Geodetic Survey, Digital Cartography and Census.

26. The Office of Precinct Demographics is charged by the General Assembly to maintain the official maps and descriptions of precincts and to serve as the authority for verifying official precinct information for the counties of South Carolina.

Gantt v. Selph, No. 2016-CP-40-5431, at 7 (S.C. Com. Pl., Oct. 10, 2016). In relevant part, the Office of Precinct Demographics’ enabling legislation lists its duties as follows:

The Office of Precinct Demographics shall:

- (1) Review existing precinct boundaries and maps for accuracy, develop and rewrite descriptions of precincts for submission to the legislative process.

- (2) Consult with members of the General Assembly or their designees on matters related to precinct construction or discrepancies that may exist or occur in precinct boundary development in the counties they represent.
- (3) Develop a system for originating and maintaining precinct maps and related data for the State.

S.C. Code Ann. § 1-11-360 (Supp. 2017) (emphasis added).³ It is particularly important to note that even where the Office of Precinct Demographics rewrites the descriptions of precincts, these descriptions are still submitted to the General Assembly and are subject to the legislative process. This is consistent with the statutory frame work in Chapter 7, Title 7 which states that the General Assembly establishes the voting precincts in the State. Section 7-7-10 states:

For the purpose of holding any general, primary, or special election in this State, the voting precincts and voting places in the several counties of the State shall be designated, fixed, and established by the General Assembly. Nothing in this chapter prohibits a county board of voter registration and elections from establishing multiple polling places within a precinct, provided that voters are assigned to these polling places alphabetically or geographically as determined by the county board of voter registration and elections and approved by a majority of that county's legislative delegation. A voter must be notified in writing of his transfer to a new polling place and the location of the new polling place.

S.C. Code Ann. § 7-7-10 (Supp. 2017) (emphasis added); see also Ops. S.C. Atty. Gen., 1987 S.C. Op. Att'y Gen. 46 (1987) (“It has been and it continues to be the opinion of this Office that boundaries of voting precincts may be changed only by the General Assembly.”); 1983 WL 181941 (S.C.A.G. July 13, 1983) (“[T]hese changes would have to be accomplished through legislative action of the General Assembly.”); 1978 S.C. Op. Att'y Gen. 99 (1978) (“It is the opinion of our Office that the General Assembly alone has the power to establish voting precinct boundaries.”). Article 3, of Chapter 7 provides a statutory framework for the alteration of polling precincts as follows:

The State Election Commission shall report the names of all polling precincts by county that have more than one thousand five hundred registered electors as of January first to the General Assembly not later than the fourth Tuesday of each odd-numbered year. If, by April first of the same year, the General Assembly has failed to alter the precincts so that no precinct shall have more than one thousand five hundred qualified electors the State Election Commission shall notify the respective county boards of voter registration and elections which shall make such alterations as necessary to conform all precincts to such limitations. ...

³ Pending legislation may amend S.C. Code Ann. § 1-11-360. House Bill 3895 was ratified by the General Assembly May 14, 2018 and is pending approval from the Governor.

S.C. Code Ann. § 7-7-710 (Supp. 2017). The plain language of Section 7-7-710 evidences legislative intent to limit precinct alterations to odd-numbered years to avoid confusion during primary and general elections for state and federal offices.

Further, Section 7-7-10 requires that the voters who are moved to a new polling place be provided written notice of the new polling location. Likewise, S.C. Code Ann. § 7-7-720(A) requires that “[a] person whose registration is transferred to another precinct by virtue of the provisions of this article must be notified by mail by the county board of voter registration and elections of the transfer.” When either the polling place or precinct where a voter is registered is changed by state or county action, the General Assembly has consistently provided a mechanism to inform affected voters. It is therefore fair to presume that had the General Assembly intended the contested case hearing and appeal process in Section 27-2-105(B) to require an immediate change to voter registration, it would provide a mechanism to notify the county boards and the SEC who are charged with overseeing voter registration as well as the affected voters. However, Section 27-2-105(B)(6) only provides notice to “the Secretary of State, the South Carolina Department of Archives, and the register of deeds in each affected county,” while there is no equivalent requirement to inform the SEC, county boards of voter registration and elections, or affected voters. Clearly, the General Assembly intended those bodies which are provided notice under subsection (B)(6) to recognize SCGS’s determination upon issuance of the director’s cover letter. However, unlike issues related to real property, if qualified voters in certifications zones are determined to have been transferred to a different county or precinct on the eve of a primary or general election and are not provided notice of the change prior to voting, the results of such elections would undoubtedly be subject to challenge. It is doubtful that the General Assembly intended such a result where the statute makes no reference to voters, precincts, the SEC, or county boards of voter registration and elections. This Office declines to adopt a construction of the statute which could have such a potentially chaotic effect on local, state, and federal elections.

Therefore, it is this Office’s opinion that a court would likely find Section 27-2-105 does not contain a clear statement of legislative intent to immediately impact voter registration or polling precincts upon the issuance of a signed cover letter by the Chief of the SCGS. Rather, a court would likely construe Section 27-2-105 in a reasonable and fair manner in harmony with Section 1-11-360 and the relevant statutes in Title 7 discussed above. It is this Office’s opinion that a court would likely find that the SEC and county boards of voter registration and elections would not be required to construe a county boundary revision by the SCGS as affecting the current county and precinct of registration for voters immediately upon issuance of the SCGS cover letter under subsection (B)(6).

Conclusion

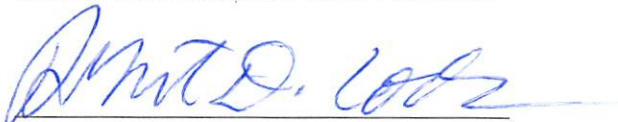
It is this Office's opinion that a court would likely find that the State Election Commission (SEC) and county boards of voter registration and elections would not be required to construe a county boundary line revision by the South Carolina Geodetic Survey (SCGS) as affecting county and precinct of registration for voters immediately upon the issuance of the SCGS cover letter under S.C. Code Ann. § 27-2-105(B)(6). S.C. Code Ann. § 27-2-105(B)(7) directs the SCGS "to prepare a unique boundary description for counties ... and forward that description in a form suitable for the General Assembly to amend county boundaries as described in Chapter 3, Title 4." The power to alter county boundary lines is reserved to the General Assembly in the South Carolina Constitution. See S.C. Const. art. VII, § 7. Further, the General Assembly is solely authorized to establish voting precincts, S.C. Code Ann. § 7-7-10, and at to alter precincts resulting from a review of existing precinct boundaries descriptions by the Office of Precinct Demographics, S.C. Code Ann. § 1-11-360. A court would likely construe Section 27-2-105 in a reasonable and fair manner in harmony with Section 1-11-360 and the relevant statutes in Title 7 discussed above. It is this Office's opinion that a court would likely find that the SEC and county boards of voter registration and elections would not be required to construe a county boundary revision by the SCGS as affecting the current county and precinct of registration for voters immediately upon issuance of the SCGS cover letter under subsection (B)(6).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General