

1975 WL 29192 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 29, 1975

*1 To permit the Board of State Canvassers to convene a meeting by way of a conference telephone call with each member at his residence rather than at the office of the Election Commission would be in contravention of Section 23-472, Code of Laws of South Carolina, 1962, as amended.

TO: James B. Ellisor
Executive Director
Election Commission

QUESTION PRESENTED:

Whether or not it would be proper for the Board of State Canvassers to convene a meeting by way of a conference telephone call with each member at his residence rather than the members having to come to Columbia to meet in person?

STATUTES AND OTHER AUTHORITIES

Section 23-473, 1962, as amended (Act No. 995, Section 10), Volume 1A, Sutherland Statutory Construction, § 25.04, Terry v. Sencindiver, 171 S.E.2d 480, 483, 153 W.Va. 651, BLACK'S Law Dictionary, 57 C.J.S. Meet, Words and Phrases, Meet, 62 C.J.S. Municipal Corporations § 392, 2 Am.Jur.2d Administrative Law, § 228, and 62 C.J.S. Municipal Corporations, § 399.

DISCUSSION:

In your letter of November 24, 1975, to the Attorney General you raised the question as to whether the Board of State Canvassers may convene a meeting by way of a conference telephone call with each member at his residence rather than at the office of the Election Commission. Section 23-472 was amended by Act No. 995 in 1968, Section 10 of said Act provides as follows:

Section 23-473. The Board of State Canvassers shall meet at the office of the Election Commission within ten days after any general election for the purposes of canvassing the vote for all offices voted for at such elections, including the votes for the electors for President and Vice President. (Emphasis Added.)

Volume 1A, Sutherland Statutory Construction, § 25.04, at P. 301 states 'Unless the context otherwise indicates the use of the word 'shall' (except in the future tense) indicates a mandatory intent'. In the absence of language in a statute showing contrary intent on the part of the Legislature, 'shall' should be afforded mandatory connotation. Terry v. Sencindiver, 171 S.E.2d 480, 483, 153 W.Va. 651. The word 'meet' has generally been defined to mean a meeting of persons face to face. See BLACK'S Law Dictionary; 57 C.J.S. Meet; Words and Phrases, Meet.

As a general rule meetings are supposed to be held at the time and place designated by statute. See 62 C.J.S. Municipal Corporations § 392; 2 Am.Jur.2d Administrative Law, § 228. In addition, it has been held that a quorum cannot be made up by telephoning absent members and obtaining their vote over the telephone, 62 C.J.S. Municipal Corporations,

CONCLUSION:

It is therefore the opinion of this Office that under Section 23-473, 1962, as amended, the Board of State Canvassers must meet at the office of the Election Commission, and therefore, could not convene a meeting by way of a conference telephone call to each member at his residence.

*2 Treva G. Ashworth
Assistant Attorney General

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