



ALAN WILSON  
ATTORNEY GENERAL

August 20, 2019

Marci Andino  
Executive Director  
South Carolina Election Commission  
P.O. Box 5987  
Columbia, South Carolina 29250

Dear Ms. Andino:

We understand from your letter, you seek an opinion of this Office concerning “the consolidation of precincts by the authorities charged by law with designating polling place locations.” Specifically, you ask “whether the use of a single polling place for multiple precincts is permitted under state law when there are suitable polling locations within the individual precincts.”

#### Law/Analysis

Section 7-3-25 of the South Carolina Code (2019) places responsibility on the State Election Commission (the “Commission”) to insure county boards of elections and voter registration comply with applicable state and federal law regarding the conduct of elections. In your letter, you state the Commission “takes the position that state law generally requires the designation of *one or more polling locations within a precinct.*” (emphasis in original). Courts of this state recognize the deference doctrine, which provides “where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency’s interpretation absent compelling reasons.” Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’tl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). We also “defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.” Id. at 34-35, 766 S.E.2d at 718. For this reason, as well as those stated below, we agree with the Commission’s interpretation of state law regarding precincts and voting places.

Section 13 of Article VII of the South Carolina Constitution gives the Legislature the authority to “establish or alter the location of voting precincts in any County.” Chapter 7 of title 7 of the South Carolina Code governs polling precincts and voting places. In this chapter, section 7-7-10 of the South Carolina Code (2019) provides:

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.

In sections 7-7-30 et seq. of the South Carolina Code (2019), the Legislature designated the precincts for each county. Article 3 of chapter 7 of title 7 of the South Carolina Code addresses alterations of precincts. This article includes section 7-7-710 of the South Carolina Code (2019), which requires the Commission to report polling precincts that have more than 1,500 registered electors to the Legislature every other year. The statute indicates if the Legislature fails to alter a precinct that has more than 1,500 qualified electors, the county board of voter registration and elections is required to alter the precinct to conform to the minimum requirements. In addition, section 7-7-730 of the South Carolina Code (2019) requires the division of precincts alphabetically “[w]hen a precinct has more than seven hundred fifty registered electors and separate managers and facilities are provided within the polling place for each list of electors.” Section 7-7-730 states that upon the completion of the division, “the provisions of Section 7-7-710 are considered to be complied with regardless of the number of electors in the precinct.” While article 3 specifically addresses division of precincts, it does not address the consolidation or precincts or polling places.

Article 5 of chapter 7 of title 7 pertains to where electors vote. Section 7-7-1000 of the South Carolina Code (2019), located in article 5, addresses the pooling of precincts. Section 7-7-1000 states:

For purposes of municipal elections only, a municipality may pool one or more precincts with other precincts and have one voting place for all of these pooled precincts upon the following conditions:

- (1) Any precinct which contains five hundred or more registered voters within the municipality must have its own voting place.
- (2) The total number of registered voters within the municipality in each group of pooled precincts cannot exceed one thousand five hundred.
- (3) The voting place of any precinct pooled with others cannot be more than three miles from the nearest part of any pooled precinct.

(4) The notice requirements of Section 7-7-15 must be complied with and in addition to this requirement, the location of voting places for all precincts including those pooled must be published in a newspaper of general circulation in the municipality on the day of the election. If the newspaper is not published daily, then on the date of publication nearest and prior to the date of election.

(5) Whenever precincts are pooled in a municipal election, the voter registration lists, poll lists, and ballots for each precinct represented must be used by the managers of election. Results of the election must also be reported and certified by individual precinct.

(emphasis added). We read this provision to allow consolidation of precincts only in municipal elections and only when the above stated criteria are met.

As our courts have stated numerous times,

[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute. Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010) (citations omitted) (internal quotations omitted). In sections 7-7-30 et seq. of the South Carolina Code, the Legislature chose to specify the precincts for each county. Furthermore, the Legislature by enacting section 7-7-1000, chose a mechanism by which municipalities may consolidate precincts for municipal elections but did not provide a similar mechanism for purposes of county and state-wide elections. "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999)). If the Legislature intended to allow for the consolidation of precincts, we believe it would have enacted a statute to that effect. In addition, the requirements set forth in sections 7-1-710 and 7-7-730 quoted above indicate the Legislature's intent to limit the numbers of electors in each precinct rather than increase them. Accordingly, we agree with your assessment that South Carolina law does not provide local election boards with authority to consolidate precincts outside of section 7-7-1000.

You also ask us to consider whether county voter registration and election board may designate a single polling place for multiple precincts. As quoted above, section 7-7-10 of the South

Carolina Code provides the Legislature shall designate the voting places. In sections 7-7-30 et seq., the Legislature generally delegates the determination of the polling places for each county to their respective county board of voter registration and elections. For example, section 7-7-30(C) of the South Carolina Code (2019) states: “The polling places for the voting precincts in Abbeville County must be determined by the Board of Voter Registration and Elections of Abbeville County with the approval of a majority of the Abbeville County Legislative Delegation.” Section 7-7-420(C) of the South Carolina Code (2019), addressing the designation of polling places for Newberry County, similarly states: “The polling places for the precincts provided in this section must be established by the Board of Voter Registration and Elections of Newberry County subject to the approval of the majority of the Newberry County Delegation.”

“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” Hodges, 341 S.C. at 85, 533 S.E.2d at 581 (citations omitted) (internal quotations omitted). “In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001). These statutes do not appear to prohibit the respective county boards from using a polling place for multiple precincts. However, as you point out in your letter, section 7-7-910(A) of the South Carolina Code (2019), pertaining to the designation of polling places, states:

Subject to the provisions of Section 7-7-920 and Section 7-5-440 and except as provided in subsection (B) of this section, each elector must be registered and, unless otherwise specified on his voting certificate, shall vote at the designated polling place within the precinct of his residence, but in incorporated municipalities in which officers are elected by wards or other municipal subdivisions, electors must be registered and shall vote at their designated polling places.

(emphasis added). Moreover, subsections (B) and (C) of section 7-7-910 of the South Carolina Code (2019) allow for an alternative polling place during emergency situations and provide:

(B)(1) For purposes of this subsection, an “emergency situation” means the designated polling place is not available for use as a polling place on the election day after the first notice of the election is published.

(2) If a designated polling place in a precinct is unavailable for use during an election as a result of an emergency situation, the authority charged by law with conducting the election shall designate an alternative polling place to be used for the electors in that precinct for any election occurring during the emergency situation. An alternative polling place for an emergency situation must be approved by the majority of the legislative delegation if the designation occurs more than seven days prior to the election. If an alternative polling place for

an emergency situation is designated seven days or less prior to the election, the authority charged by law with conducting the election must notify the members of the legislative delegation of the alternative polling place.

(3) The alternative polling place is not required to be within the precinct of the elector's residence; however, the authority charged by law with conducting the election may designate an alternative polling place outside the precinct only if no other location within the precinct is available for use as a polling place. If an alternative polling place is outside the precinct, it must be located in an adjoining precinct. The alternative polling place must be selected with consideration of the distance the electors would be required to travel in order to vote.

...

(C) If an alternative polling place outside of the precinct is selected pursuant to subsection (B) of this section, the authority charged by law with conducting the election shall certify in writing to the State Election Commission that no other location within the precinct is available for use as a polling place and that the selection of a polling place was made with consideration of the distance electors would have to travel to vote.

(emphasis added).

“In construing a statute, the court looks to the language as a whole in light of its manifest purpose. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010). Although the individual provisions pertaining particularly to each county's polling places do not prohibit the use of one polling place for multiple precincts, we agree with the Commission that section 7-7-910 indicates the Legislature's intent that electors vote within the boundaries of the precinct of their residence. Subsection (B) of this statute allows for the a polling place outside of the precinct to be used in an emergency situation “only if no other location within the precinct within is available” and places restrictions on the location and requires consideration for the distance electors may need to travel. We believe this provision expresses the intent of the Legislature to designate polling places in a way to make it convenient for the electorate to vote.

In a 2016 opinion, we discussed the importance of the right to vote in regard to the Voter ID law. Op. S.C. Att'y Gen., 2016 WL 963705 (S.C.A.G. Mar. 8, 2016). Quoting a 2013 opinion, we explained “it is well established that the right to vote is a fundamental right. As the United States Supreme Court has repeatedly emphasized, it is beyond dispute that ‘voting is of the most

fundamental significance under our constitutional structure.’ Illinois Bd. of Elections v. Specialist Workers Party, 440 U.S. 173, 184 (1979).” Id. In that opinion, we also emphasized the policy of this Office, which is to err on the side of the right to vote. Id. “[W]hen there is any doubt as to how a statute is to be interpreted and how that interpretation is to be applied in a given instance, it is the policy of this Office to construe such doubt in favor of the people’s right to vote.” Op. S.C. Att’y Gen., 1996 WL 679459 (S.C.A.G. Oct. 11, 1996).

Using a single polling place for multiple precincts may result in electors traveling further to get to the polls. You mentioned that each precinct is given its own line. However, multiple lines could cause confusion among voters. Combining precincts also puts a greater burden on the facility used, especially in regard to parking. All of these consequences of combining precincts could disenfranchise voters. Accordingly, any question in our minds as to the Legislature’s intention to allow a single polling place to serve multiple precincts must be resolved in favor of protecting the electorate’s right to vote.

Moreover, section 7-11-20 of the South Carolina Code (2019) allows polling places to be combined for purposes of presidential preference primaries. We did not find a similar provision pertaining to elections generally. Under the doctrine of *expressio unius est exclusio alterius*, if the Legislature intended to allow for local boards to combine multiple polling places for several different precinct into a single polling place, it would have stated such.

We understand from your letter, that your question to us arose from communication between the Commission and the Charleston County Board of Registration and Elections. Section 7-7-140 of the South Carolina Code (2019) establishes the precincts in Charleston County. In regard to polling places, section 7-7-140(C) provides: “The Board of Voter Registration and Elections of Charleston County shall designate the polling place in each precinct.” (emphasis added). As compared to the language delegating the designation of polling places we discussed above, Section 7-7-140 makes clear the Legislature intended for the polling place to be located in the precinct it serves and thereby, prohibits the use of one polling place to serve multiple precincts. We understand some of the polling places in Charleston County serve anywhere from two to eight precincts. Therefore, many of the polling places likely are not located “in” the precinct they serve. We understand in the past, the Legislature designated polling places in Charleston County to serve more than one precinct. See 1982 S.C. Acts 357. However, the Legislature repealed these statutes and without evidence to the contrary, we believe it did not intend for this practice to continue.

### **Conclusion**

Based on our review of the statutes governing precincts and polling places and giving deference to the Commission’s interpretation of these statutes, we agree the Legislature did not give authority to county boards of voter registration and elections to consolidate precincts unless specifically provided for by statute. In addition, we agree the Legislature did not intend for

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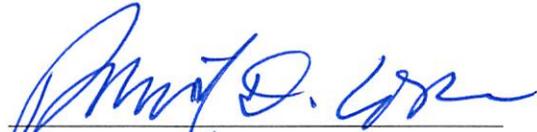
county boards to use a single polling place for multiple precincts unless specified by the Legislature.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General