CHAPTER 13

Conduct of Elections

ARTICLE 1

When, Where and How Elections Held

**SECTION 7‑13‑10.** Time of general elections for Federal, State and county officers; conduct of general and special elections.

 General elections for Federal, State and county officers in this State shall be held on the first Tuesday following the first Monday in November in each even‑numbered year at such voting places as have been or may be established by law. All general or special elections held pursuant to the Constitution of this State shall be regulated and conducted according to the rules, principles and provisions herein prescribed.

HISTORY: 1962 Code Section 23‑391; 1952 Code Section 23‑302; 1950 (46) 2059; 1966 (54) 2340.

CROSS REFERENCES

Acquisition and use of voting machines, see Sections 7‑13‑1610 et seq.

Conduct of elections, generally, see SC Const, Art 2, Section 10.

Constitutional provision that electors are privileged from arrest, see SC Const, Art 2, Section 11.

Elections for municipal offices, see Sections 5‑15‑10 et seq.

Free and open elections, see SC Const, Art 1, Section 5.

Provisions of Chapter 13 of Title 7 as applicable to elections to create special tax districts, determine the nature of the services to be rendered, and determine the maximum level of taxes or user service charges, see Section 4‑9‑30.

Rule that elections are to be by secret ballot, see SC Const, Art 2, Section 1.

Time when nominee by petition must be placed on ballot for elections under this section, see Section 7‑13‑351.

LIBRARY REFERENCES

29 C.J.S., Elections Section 198.

Attorney General’s Opinions

The commissioners of election may provide a referendum to propose a change in the tax millage of a special purpose district in conjunction with the general election, as long as the cost of the referendum is paid by the commissioners. 1975‑76 Op Atty Gen, No. 4342, p 168.

NOTES OF DECISIONS

In general 1

1. In general

So is the clerk of common pleas. Williams v Ostendorf, MS Dec 1877. State v Sims, 18 SC 460 (1883).

Secretary of State and the commissioner of election do not have any duties with respect to furnishing ballots for the use of the voters or exercising supervision of any sort over the manner in which voting is conducted. The Secretary of State has nothing to do with the election until after the voting is concluded and the returns are being canvassed, and the Federal commissioners of election are required, so far as the voting is concerned, merely to appoint managers to conduct the election and to provide ballot boxes. Smith v. Blackwell, 1940, 115 F.2d 186. Election Law 315; Election Law 366

This section only fixes time for the holding of the biennial general election and is obviously inapplicable to the office of sheriff, the term of which is fixed by the Constitution at four years. Privette v. Grinnell (S.C. 1939) 191 S.C. 376, 4 S.E.2d 305. Public Employment 69; Sheriffs And Constables 2

It has no application to elections for officers whose terms of office are fixed by the Constitution at four years. Cannon v. Sligh (S.C. 1933) 170 S.C. 45, 169 S.E. 712. Clerks Of Courts 7

Failure to require production of registration certificate invalidates bond issue. It was held that a county bond issue was invalid because of a failure to require voters to produce registration certificates or tax receipts at election at which issue was approved. Dial v. Watts (S.C. 1927) 138 S.C. 468, 136 S.E. 891.

Court will not enjoin special election where adequate remedy by contest exists. The Supreme Court will not enjoin a special election when the parties have an adequate remedy by contest before the board of canvassers, and no property rights are involved. Little v. Barksdale (S.C. 1908) 81 S.C. 392, 63 S.E. 308.

School commissioner is State officer who is to be elected at a general election. Pettigrew v. Bell (S.C. 1891) 34 S.C. 104, 12 S.E. 1023.

**SECTION 7‑13‑15.** Primaries to be conducted by State Election Commission and county boards of voter registration and elections on second Tuesday in June; filing fees.

 (A) This section does not apply to municipal primaries.

 (B) Except as provided in subsection (A) or unless otherwise specifically provided for by statute or ordinance, the following primaries must be conducted by the State Election Commission and the county boards of voter registration and elections on the second Tuesday in June of each general election year:

 (1) primaries for federal offices, excluding a presidential preference primary for the Office of President of the United States as provided pursuant to Section 7‑11‑20(B); and

 (2) primaries for:

 (a) state offices;

 (b) offices including more than one county;

 (c) countywide and less than countywide offices, specifically including, but not limited to, all school boards and school trustees; and

 (d) special purpose district offices, which include, but are not limited to, water, sewer, fire, soil conservation, and other similar district offices.

 (C) Filing fees received from candidates filing to run in primary elections may be retained and expended by the State Election Commission to pay for the conduct of primary elections. Any balance in the filing fee accounts or in the primary and general election accounts as of each June thirtieth may be carried forward in these accounts to the succeeding fiscal year and must be expended for the same purposes.

HISTORY: 1992 Act No. 253, Section 16, eff February 19, 1992; 2007 Act No. 81, Section 2, eff June 19, 2007; 2014 Act No. 256 (H.4732), Section 3, eff June 6, 2014.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 2007 amendment rewrote this section.

2014 Act No. 256, Section 3, in subsection (A), deleted paragraph designator (1), and deleted paragraph (2), relating to an exception for presidential preference primary elections; in subsection (B)(1), substituted “federal” for “national”, substituted “a presidential preference primary” for “the presidential preference primaries”, and made other nonsubstantive changes; and added subsection (C), relating to filing fees.

RESEARCH REFERENCES

ALR Library

120 ALR 5th 125 , Constitutionality of Voter Participation Provisions for Primary Elections.

Encyclopedias

S.C. Jur. Elections Section 44, Election.

United States Supreme Court Annotations

Freedom of association, political parties, blanket primary system, candidate designation on ballot of political party preference, see Washington State Grange v. Washington State Republican Party, 2008, 128 S.Ct. 1184, 552 U.S. 442, 170 L.Ed.2d 151, on remand 545 F.3d 1125.

Notes of Decisions

Equal protection 2

Freedom of association 1

1. Freedom of association

South Carolina’s open primary laws, which allowed a voter to request the ballot for any party’s primary whether or not voter was registered as a member of that party but allowed voter to cast vote in only one party’s primary election, did not facially burden political parties’ right to freedom of association; even if a political party could not conduct a closed primary, the party could opt out of the primary method and use alternative methods of nomination authorized under South Carolina election laws, including convention method and petition method, allowing parties to associate with only those people approved for membership in the party. Greenville County Republican Party Executive Committee v. South Carolina, 2011, 824 F.Supp.2d 655, motion to amend denied 2011 WL 2910360, appeal dismissed 604 Fed.Appx. 244, 2015 WL 1188395. Constitutional Law 1468; Election Law 67

2. Equal protection

Even if individual electors living in different parts of the same county participated in different types of primaries, under South Carolina law that allowed municipalities to select one of three nonpartisan methods of nomination, such law did not violate individual electors’ rights under the Equal Protection Clause; there was no distinction between electors based on where they lived that was imposed upon the elector by the State and, even if a distinction did exist, it did not rise to the level of the invidious, arbitrary, or irrational conduct typically found to offend the Equal Protection Clause. Greenville County Republican Party Executive Committee v. South Carolina, 2011, 824 F.Supp.2d 655, motion to amend denied 2011 WL 2910360, appeal dismissed 604 Fed.Appx. 244, 2015 WL 1188395. Constitutional Law 3642; Election Law 232(2)

**SECTION 7‑13‑20.** Time of general election for certain county officers.

 There shall be a general election for county supervisors, county superintendents of education, sheriffs, coroners and clerks of the courts of common pleas held in each county at every alternate general election, reckoning from the year 1960, except in those counties in which the term of office of any such officers may be for a period other than four years. In such cases elections to fill such offices shall be held at the general election next preceding the expiration of any such term of office.

HISTORY: 1962 Code Section 23‑392; 1952 Code Section 23‑303; 1942 Code Section 2350; 1932 Code Section 2350; Civ. C. ‘22 Section 283; Civ. C. ‘12 Section 280; Civ. C. ‘02 Section 253; G. S. 160, 642, 701; R. S. 211; 1882 (17) 1125; 1885 (19) 144; 1889 (20) 281; 1966 (54) 2340.

CROSS REFERENCES

Election of sheriff in each presidential election year, see Section 23‑11‑10.

Elections for municipal offices, see Sections 5‑15‑10 et seq.

When election for clerk of court held, see Section 14‑17‑10.

LIBRARY REFERENCES

29 C.J.S., Elections Section 198.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Pettigrew v Bell, 34 SC 104, 12 SE 1023 (1891). Limehouse v Blackwell, 190 SC 122, 2 SE2d 483 (1939). Privette v Grinnell, 191 SC 376, 4 SE2d 305 (1939). Brown v Moseley, 222 SC 1, 71 SE2d 591 (1952).

A clerk is a State officer within the meaning of the State Constitution, and his term is limited until the next general election. Williams v Ostendorf, MS Dec 1877. State v Sims, 18 SC 460 (1883).

Constitutionality. This section is not in conflict with SC Const, Art 5, Section 27, but on the contrary it is supplementary thereto and valid. Cannon v. Sligh (S.C. 1933) 170 S.C. 45, 169 S.E. 712.

**SECTION 7‑13‑30.** Time of election of probate judges.

 The probate judge in every county shall be elected at every alternate general election, reckoning from the year 1958.

HISTORY: 1962 Code Section 23‑394; 1952 Code Section 23‑305; 1942 Code Section 2350; 1932 Code Section 2350; Civ. C. ‘22 Section 283; Civ. C. ‘12 Section 280; Civ. C. ‘02 Section 253; G. S. 160, 642, 701; R. S. 211; 1882 (17) 1125; 1885 (19) 144; 1889 (20) 281; 1966 (54) 2340.

CROSS REFERENCES

Probate courts, generally, see Sections 14‑23‑30 et seq.

Attorney General’s Opinions

Expiration of term of probate judge. The term of office of probate judge expires four years from the date of the first Tuesday in January of each alternate general election year, reckoning from the year 1958, except in Georgetown County, where the probate judge is elected at every alternate general election, reckoning from the year 1960. 1965‑66 Op Atty Gen, No. 2177, p 312.

**SECTION 7‑13‑35.** Notice of general, municipal, special, and primary elections.

 The authority charged by law with conducting an election must publish two notices of general, municipal, special, and primary elections held in the county in a newspaper of general circulation in the county or municipality, as appropriate. Included in each notice must be a reminder of the last day persons may register to be eligible to vote in the election for which notice is given, notification of the date, time, and location of the hearing on ballots challenged in the election, a list of the precincts involved in the election, the location of the polling places in each of the precincts, and notification that the process of examining the return‑addressed envelopes containing absentee ballots may begin at 2:00 p.m. on election day at a place designated in the notice by the authority charged with conducting the election. The first notice must appear not later than sixty days before the election and the second notice must appear not later than two weeks after the first notice.

HISTORY: 1978 Act No. 572, eff July 1, 1978; 1988 Act No. 422, Section 2, eff March 28, 1988; 1990 Act No. 357, Section 1, eff March 19, 1990; 1992 Act No. 253, Section 1, eff February 19, 1992; 1996 Act No. 434, Section 5, eff June 4, 1996.

Effect of Amendment

The 1988 amendment rewrote this section.

The 1990 amendment inserted the provision “, and notification that the process of examining the return‑addressed envelopes containing absentee ballots will begin at 2:00 p.m. on election day”, and replaced “shall” with “must” and “prior to” with “before”.

The 1992 amendment substituted “county, except municipal elections,” for “county or municipality” and deleted “or municipality” following the second occurrence of “county”.

The 1996 amendment substituted “must” for “shall” preceding “publish two notices”, inserted “municipal,” preceding “special, and primary elections”, deleted “, except municipal elections,” following “held in the county”, inserted “or municipality, as appropriate” following “circulation in the county”, and substituted “may begin at 2:00 p.m. on election day at a place designated in the notice by the authority charged with conducting the election” for “will begin at 2:00 p.m. on election day”.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

NOTES OF DECISIONS

In general 1

1. In general

Statute outlining procedure for filling vacancies in municipal offices applied to determine notice requirements, rather than statute requiring 60‑day notice for special elections or statute requiring public notice of elections, in situation where special election was to be held to fill vacant city council position; statute outlining procedure was more specific statute and others were general statutes, statute requiring public notice did not repeal by implication statute outlining procedure, and other statutes permitted elections with less notice than that required by statutes governing notice. Denman v. City of Columbia (S.C. 2010) 387 S.C. 131, 691 S.E.2d 465. Election Law 299

**SECTION 7‑13‑40.** Time of party primary; certification of names; verification of candidates’ qualifications; filing fee.

 In the event that a party nominates candidates by party primary, a party primary must be held by the party and conducted by the State Election Commission and the respective county boards of voter registration and elections on the second Tuesday in June of each general election year, and a second and third primary each two weeks successively thereafter, if necessary. Written certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary to the State Election Commission or the county board of voter registration and elections whichever is responsible under law for preparing the ballot, not later than twelve o’clock noon on April fifth, or if April fifth falls on a Saturday or Sunday, not later than twelve o’clock noon on the following Monday. Political parties nominating candidates by party primary must verify the qualifications of those candidates prior to certification to the appropriate election commission of the names of candidates to be placed on primary ballots. The written verification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office for which he has filed. A political party must not certify any candidate who does not or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which the candidate has filed, and such candidate’s name shall not be placed on a primary ballot. The filing fees for all candidates filing to run in all primaries, except municipal primaries, must be transmitted by the respective political parties to the State Election Commission and placed by the executive director of the commission in a special account designated for use in conducting primary elections and must be used for that purpose. The filing fee for each office is one percent of the total salary for the term of that office or one hundred dollars, whichever amount is greater.

HISTORY: 1962 Code Section 23‑396; 1952 Code Section 23‑372; 1950 (46) 2059; 1954 (48) 1447; 1966 (54) 2093, 2340; 1977 Act No. 133 Section 3; 1988 Act No. 363, Section 2, eff March 14, 1988; 1992 Act No. 253, Section 2, eff February 19, 1992; 1994 Act No. 497, Part II, Section 134, eff June 29, 1994; 1996 Act No. 226, Section 3, eff February 12, 1996; 2000 Act No. 236, Section 3, eff March 7, 2000; 2013 Act No. 61, Section 5, eff June 25, 2013.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

1992 Act No. 289, Sections 5, 6, effective March 12, 1992, read as follows:

“SECTION 5. Notwithstanding the provisions of Section 7‑13‑40, Code of Laws of South Carolina, 1976, for 1992 only, the date for primary elections is the fourth Tuesday in August.”

“SECTION 6. Notwithstanding any other provision of law, for candidates for school board whose primary elections coincide with the general primary election established by Section 7‑13‑40 of the 1976 Code:

“(1) for 1992 only, the dates for filing for all candidates seeking nomination by a political party primary, political party convention, or petition is between noon June first and noon June twenty‑fifth;

“(2) for 1992 only, the date for filing the notice of candidacy and pledge is by noon on June twenty‑fifth; and

“(3) for 1992 only, the date for primary elections is the fourth Tuesday in August.”

1997 Act No. 1, Section 6, eff February 12, 1997, provides as follows:

“SECTION 6. For purposes of the 1997 election for the members of the House of Representatives to be elected from those election districts revised by the provisions of Section 2‑1‑25 of the 1976 Code, as amended by Section 1 of this act, and for the members of the Senate to be elected from those election districts revised by Section 4 of this act, the following provisions apply:

“(1) Notwithstanding the provisions of Section 7‑11‑15 of the 1976 Code, the dates for filing for all candidates seeking nomination by a political party primary or political party convention are between noon on June second and noon on June sixteenth.

“(2) Notwithstanding the provisions of Section 7‑11‑210 of the 1976 Code, the date for filing the notice of candidacy and pledge is by noon on June sixteenth.

“(3) Notwithstanding the provisions of Section 7‑13‑40 of the 1976 Code, certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary to the State Election Commission or the county election commission, whichever is responsible under law for preparing the ballot, not later than noon on June eighteenth.

“(4) Notwithstanding the provisions of Section 7‑13‑40 of the 1976 Code, the date for primary elections is the second Tuesday in August.

“(5) For these elections held in 1997 only, if run‑off primary elections are necessary they must be held on August twenty‑sixth.

“(6) Notwithstanding the provisions of Section 7‑13‑351 of the 1976 Code, all candidates seeking nomination by petition must file these petitions with the State Election Commission no later than noon on September ninth.

“(7) Notwithstanding the provisions of Section 7‑13‑350 of the 1976 Code, the names of all nominees to be placed on the special election ballots must be certified by the respective political party to the appropriate election commissioners by noon on September eleventh.”

2013 Act No. 61, Sections 11, 14, provide as follows:

“SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

“(1) The State Election Commission must notify each county election commission of the provisions of this act.

“(2) The State Election Commission must post the provisions of this act on its website.

“(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.”

“SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

The amendment by 2013 Act No. 61 became effective June 25, 2013, see South Carolina Libertarian Party v. South Carolina State Election Com’n, 407 S.C. 612, 757 S.E.2d 707 (2014).

Effect of Amendment

The 1977 amendment substantially revised the second sentence of this section.

The 1988 amendment deleted language relating to entries for nomination in party primary for a statewide, congressional, or district office which includes more than one county, State Senator, House of Representatives, a county wide or less than county wide office, and also deleted language relating to the death or withdrawal of a candidate.

The 1992 amendment provided for primary elections to be conducted by State and county election commissions, and added the second, third, and fourth sentences, relative to certification of names and filing fees.

The 1994 amendment, at the beginning of the third sentence, substituted “The filing fees for all candidates filing to run” for “The filing fees for candidates whose names are on ballots to be voted on”.

The 1996 amendment revised this section to provide April ninth as the date for certification of names of candidates.

The 2000 amendment substituted “Written certification” for “Certification” and added “Saturday or” in the second sentence, added the third sentence relating to verification of candidates’ qualifications, and substituted “primary elections” for “the primaries” in the fourth sentence.

The 2013 amendment substituted “April fifth, or if April fifth” for “April ninth, or if April ninth” in the second sentence, substituted “A political party must not certify” for “Political parties must not accept the filing of” in the fifth sentence, and substituted “has filed” for “desires to file” in the fifth sentence.

CROSS REFERENCES

Decertification of a political party for failure to nominate candidates for office by convention or party primary, see Section 7‑9‑10.

LIBRARY REFERENCES

29 C.J.S., Elections Section 117.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 42, Date.

S.C. Jur. Elections Section 44, Election.

Attorney General’s Opinions

Candidates for countywide and less than countywide offices should be certified by state parties and, if one so exists, the respective county party. S.C. Op.Atty.Gen. (March 6, 2014) 2014 WL 1398579.

The Legislature likely intended to leave state parties with the discretion to determine whether candidates for countywide or less than countywide offices should be certified by the state party or the respective county party, if one so exists. S.C. Op.Atty.Gen. (March 6, 2014) 2014 WL 1398579.

The decision as to whether or not an office could be opened for refiling where a candidate withdraws to accept another public office would depend upon many variables, especially the timing of the resignation. 1988 Op Atty Gen, No. 88‑25, p 81.

An unopposed candidate in a primary must file a Campaign Disclosure Form within thirty days after the primary. 1982 Op Atty Gen, No. 82‑47, p 53.

The county executive committee could reopen primary entries for the office of Representative only if there were only two candidates for the party’s nomination to that office or one candidate, and one or both of the two candidates, or the unopposed candidate, were to die or withdraw after the closing date for filing pledges had passed, thereby leaving only one candidate or no candidate for the party’s nomination in the primary. 1969‑70 Op Atty Gen, No. 2860, p 96.

If there were more than five candidates, the death or withdrawal of one would not furnish sufficient grounds for the executive committee to open entries back up for the reason that there would still be at least two candidates for each of the four seats open. As long as there are as many as five candidates for the four seats, there will be at least two persons vying for the party’s nomination for each one in the primary because the seats are not numbered and the four candidates obtaining the greatest number of votes (whether finally determined in a first, second or even a third primary) will be nominated. 1969‑70 Op Atty Gen, No. 2860, p 96.

Where only one candidate. This section [Code 1962 Section 23‑396] does not authorize State or county executive committee to allow additional primary entries for an office merely because there is only one candidate after the closing time for filing pledges has passed. 1969‑70 Op Atty Gen, No. 2858, p 94.

The deadline for nomination in single‑county districts is two weeks after the county convention convenes, when nomination by convention is used. 1965‑66 Op Atty Gen, No. 1994, p 52.

Withdrawal of candidate. Code 1962 Sections 23‑266 and 23‑372 (now this section [Code 1962 Section 23‑396]), read together, authorize the substitution of a candidate upon the withdrawal of a prior candidate. 1965‑66 Op Atty Gen, No. 2014, p 77.

Substitution where not more than two candidates for one office. Where a candidate for office dies or withdraws, a party may nominate a substitute candidate if there are not more than two party candidates for any one office. 1965‑66 Op Atty Gen, No. 2014, p 77.

NOTES OF DECISIONS

In general 1

1. In general

Unclear whether decision not to conduct primaries whould eliminate June filing. It is not clear under Code 1962 Section 23‑264 whether a decision by the established political parties in South Carolina not to conduct primaries would eliminate the June filing and bring into effect Code 1962 Section 23‑400.15. Toporek v. South Carolina State Election Commission (D.C.S.C. 1973) 362 F.Supp. 613.

Statutes which regulate the time for filing a declaration of candidacy are almost universally held to be mandatory. Vandross v. Ellisor (D.C.S.C. 1972) 347 F.Supp. 197.

And a declaration that is filed too late is a nullity. Vandross v. Ellisor (D.C.S.C. 1972) 347 F.Supp. 197.

Unless there are special circumstances or showing of excuse. There are some cases which hold that where there are special circumstances or a special showing of excuse, a declaration of candidacy which is filed too late may be accepted nevertheless. Vandross v. Ellisor (D.C.S.C. 1972) 347 F.Supp. 197.

Stated in United Citizens Party of South Carolina v. South Carolina State Election Commission (D.C.S.C. 1970) 319 F.Supp. 784.

Requirement that political parties certify unopposed candidates and perform other minor functions relating to party primaries did not give rise to any property interest in filing fees of unopposed candidates, and thus, statute allowing State Election Commission to collect filing fees for opposed and unopposed primary candidates did not effect taking of local democratic party’s property without just compensation. Orangeburg County Democratic Party v. South Carolina State Election Com’n (S.C. 1996) 324 S.C. 108, 477 S.E.2d 707. Eminent Domain 2.4

**SECTION 7‑13‑45.** Acceptance of filings.

 In every general election year, the Executive Director of the State Election Commission and the director of each county board of voter registration and elections shall:

 (1) accept filings during the regular business hours on the regular business days of the filing period as required by Section 7‑11‑15;

 (2) place an advertisement to appear two weeks before the filing period begins in a newspaper of general circulation in the county at least five by seven inches in size that notifies the public of the dates of the filing periods, the offices that may be filed for, the place and street address where filings may be made, and the hours that an authorized person will be present to receive filings.

HISTORY: 1989 Act No. 166, Section 1, eff January 1, 1990; 1996 Act No. 434, Section 6, eff June 4, 1996; 2013 Act No. 61, Section 6, eff June 25, 2013; 2018 Act No. 142 (H.4977), Section 7, eff March 15, 2018.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

2013 Act No. 61, Sections 11, 14, provide as follows:

“SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

“(1) The State Election Commission must notify each county election commission of the provisions of this act.

“(2) The State Election Commission must post the provisions of this act on its website.

“(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.”

“SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

The amendment by 2013 Act No. 61 became effective June 25, 2013, see South Carolina Libertarian Party v. South Carolina State Election Com’n, 407 S.C. 612, 757 S.E.2d 707 (2014).

Effect of Amendment

The 1996 amendment redesignated paragraphs (1) through (3) as paragraphs (2) through (4), and inserted a new paragraph (1); and in paragraph (4), as so redesignated, substituted “periods” for “period”.

The 2013 amendment rewrote the section.

2018 Act No. 142, Section 7, deleted the (A) identifier preceding “In every election year”; in (1), substituted “accept filings during the regular business hours on the regular business days of the filing period” for “establish regular hours of not less than four hours a day during the final seventy‑two hours of the filing period in which the director or some person he designates must be present to accept filings”; and made a nonsubstantive change in (2).

**SECTION 7‑13‑50.** Second and other primaries.

 A second primary, when necessary, must be held two weeks after the first and is subject to the rules governing the first primary. At the second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other remaining candidate alone shall run for any one office and if only one candidate remains, he is considered nominated, except that if there are two or more vacancies for any particular office, the number of candidates must be double the number of vacancies to be filled if so many candidates remain. In all second primaries the candidate receiving the largest number of votes cast for a given office must be declared the nominee for the office whether or not he has received a majority of the votes cast for that office, and when there are several candidates for several different offices, then the several candidates receiving the largest number of votes for the several positions are considered as nominated for the offices whether or not they received a majority of the votes cast. Other primaries, if necessary, must be ordered in a similar manner by the county board of voter registration and elections or the State Election Commission, as appropriate.

HISTORY: 1962 Code Section 23‑397; 1952 Code Section 23‑387; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1988 Act No. 364, Section 3, eff March 14, 1988; 1992 Act No. 253, Section 3, eff February 19, 1992.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1988 amendment made grammatical changes and deleted language relating to a tie in the second primary.

The 1992 amendment replaced “county chairman” with “county election commission” and “state chairman” with “State Election Commission”.

CROSS REFERENCES

Method for determining what candidates have received a majority vote, see Section 7‑17‑610.

LIBRARY REFERENCES

29 C.J.S., Elections Section 117.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 42, Date.

**SECTION 7‑13‑60.** Hours polls open.

 The polls must be opened at seven o’clock a.m. and closed at seven o’clock p.m. the day of election and must be held open during these hours without intermission or adjournment.

HISTORY: 1962 Code Section 23‑398; 1952 Code Section 23‑342; 1950 (46) 2059; 1956 (49) 1775, 1799; 1965 (54) 466; 1966 (54) 2340; 1986 Act No. 342, eff March 7, 1986; 1992 Act No. 253, Section 4, eff February 19, 1992.

Effect of Amendment

The 1986 amendment substituted “must” for “shall” and substituted “seven o’clock” for “eight o’clock” as the time when polls must be opened.

The 1992 amendment struck out the provision that the county committee may close any or all polls at an earlier hour than 7 p.m., and made several grammatical changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 56, Time.

**SECTION 7‑13‑70.** Repealed by 2014 Act No. 196, Section 7, eff June 2, 2014.

Editor’s Note

Former Section 7‑13‑70 was titled Appointment of county commissioners of election; oath; training and certification and was derived from 1962 Code Section 23‑400; 1952 Code Section 23‑306; 1950 (46) 2059; 1961 (52) 48; 1966 (54) 2340; 1968 (55) 2316; 1970 (56) 2367; 1988 Act No. 422, Section 3, eff March 28, 1988; 1990 Act No. 357, Section 2, eff March 19, 1990; 1990 Act No. 497, Section 1, eff May 29, 1990; 1992 Act No. 253, Section 5, eff February 19, 1992; 1996 Act No. 465, Section 3, eff August 21, 1996; 1998 Act No. 304, Section 3, eff May 27, 1998; 2007 Act No. 100, Section 3, eff June 18, 2007.

**SECTION 7‑13‑72.** Managers of election.

 For the general election held on the first Tuesday following the first Monday in November in each even‑numbered year, the members of the county board of voter registration and elections must appoint three managers of election for each polling place in the county for which they must respectively be appointed for each five hundred electors, or portion of each five hundred electors, registered to vote at the polling place.

 For primary elections held on the second Tuesday in June of each general election year, the members of the county board of voter registration and elections must appoint three managers of election for each polling place in the county for which they must respectively be appointed for the first five hundred electors registered to vote in each precinct in the county, and may appoint three additional managers for each five hundred electors registered to vote in the precinct above the first five hundred electors, or portion thereof. The members of the county board of voter registration and elections must also appoint from among the managers a clerk for each polling place in the county, and none of the officers may be removed from office except for incompetence or misconduct.

 For all other primary, special, or municipal elections, the authority charged by law with conducting the primary, special, or municipal elections must appoint three managers of election for the first five hundred electors registered to vote in each precinct in the county, municipality, or other election district and one additional manager for each five hundred electors registered to vote in the precinct above the first five hundred electors. The authority responsible by law for conducting the election must also appoint from among the managers a clerk for each polling place in a primary, special, or municipal election.

 Forty‑five days prior to any primary, except municipal primaries, each political party holding a primary may submit to the county board of voter registration and elections a list of prospective managers for each precinct. The county board of voter registration and elections must appoint at least one manager for each precinct from the list of names submitted by each political party holding a primary. However, the county board of voter registration and elections may refuse to appoint any prospective manager for good cause.

 No person may be appointed as a manager in a primary, general, or special election who has not completed a training program approved by the State Election Commission concerning his duties and responsibilities as a poll manager and who has not received certification of having completed the training program. The training program and the issuance of certification must be carried out by the county board of voter registration and elections. After their appointment, the managers and clerks must take and subscribe, before any officer authorized to administer oaths, the following oath of office prescribed by Section 26 of Article III of the Constitution: “I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God”.

 The oath must be immediately filed in the office of the clerk of court of common pleas of the county in which the managers and clerks are appointed, or if there is no clerk of court, in the office of the Secretary of State. Before opening the polls, the managers of election must take and subscribe the oath provided for in Section 7‑13‑100. Upon the completion of the canvassing of votes, this oath must be filed with the members of the county board of voter registration and elections along with the ballots from that election precinct.

HISTORY: 1996 Act No. 465, Section 4, eff August 21, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑75.** Members of local boards of voter registration and elections; political activity prohibited.

 No member of a county or municipal board of voter registration and elections may participate in political management or in a political campaign over whose election the member has jurisdiction during the member’s term of office. No member may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate over whose election the member has jurisdiction. Violation of this section subjects the member to removal by the Governor or appropriate appointive authority.

HISTORY: 1996 Act No. 423, Section 1, eff June 18, 1996; 2000 Act No. 392, Section 1, eff August 1, 2000.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 2000 amendment, in the first sentence, added “over whose election the member has jurisdiction”.

**SECTION 7‑13‑80.** Organization of board of voter registration and elections managers and clerks; oaths.

 The board members, managers, and clerks at their first meeting, respectively, must proceed to organize as a board. The county board of voter registration and elections must appoint the chairman of the board of managers. The chairman, in each instance, may administer oaths.

HISTORY: 1962 Code Section 23‑400.1; 1952 Code Section 23‑307; 1950 (46) 2059; 1961 (52) 48; 1966 (54) 2340; 1990 Act No. 357, Section 3, eff March 19, 1990; 1996 Act No. 434, Section 7, eff June 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1990 amendment deleted the authority to appoint a clerk and added references to clerks.

The 1996 amendment substituted “must” for “shall” following “respectively,”, and substituted “. The county election commission must appoint the chairman of the board of managers. The” for “by appointing one of their number chairman of the board. And the”.

Attorney General’s Opinions

County election commissioners possess the authority to hire and fire a clerk or other employees of the commission. 1989 Op Atty Gen, No. 89‑41, p 112.

**SECTION 7‑13‑90.** Repealed by 1992 Act No. 253, Section 17, eff February 19, 1992.

Editor’s Note

Former Section 7‑13‑90 provided for the appointment, by county committees, of managers for primaries. Former statute was derived from 1962 Code Section 23‑400.2; 1952 Code Section 23‑376; 1950 (46) 2059, 2442; 1954 (48) 1447; 1966 (54) 2340; 1988 Act No. 422, Section 4.

Attorney General’s Opinions

The right to designate the bystander is exclusively with the voter and not with the chairman of the managers or the poll manager appointed by the chairman. Attorney General’s Opinion Number 2011, of April 5, 1966, expressly states that the poll manager neither designates nor assists the bystander. 1978 Op Atty Gen, No. 78‑217, p 250.

**SECTION 7‑13‑100.** Managers shall take oath before opening polls.

 The managers before opening the polls, shall take and sign the following oath: “We do solemnly swear that we will conduct this election according to law and will allow no person to vote who is not entitled by law to vote in this election, and we will not unlawfully assist any voter to prepare his ballot and will not advise any voter as to how he should vote at this election.”

HISTORY: 1962 Code Section 23‑400.3; 1952 Code Section 23‑378; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 50, Oath.

Attorney General’s Opinions

Poll manager is public officer for dual office holding purposes. 1984 Op Atty Gen, No. 84‑124, p. 279.

**SECTION 7‑13‑110.** Poll managers to be residents and registered electors of counties; assistants.

 All managers of election for the various polling places in the State must be residents and registered electors of the respective counties in which they are appointed to work or in an adjoining county. Any person at least sixteen years of age who has completed the training required by Section 7‑13‑72 and who is not otherwise disqualified by law may be appointed as a poll manager’s assistant by the appropriate county board of voter registration and elections. Any sixteen‑ or seventeen‑year‑old appointed as a poll manager’s assistant may not serve as chairman of the managers or clerk in the polling place to which he or she is appointed. Sixteen‑ and seventeen‑year‑olds must serve under supervision of the chairman of the managers of the polling place, and their specific duties must be prescribed by the county board of voter registration and elections. One sixteen‑ or seventeen‑year‑old assistant poll manager may be appointed for every two regular poll managers appointed to work in any precinct.

HISTORY: 1962 Code Section 23‑400.3:1; 1974 (58) 2367; 2000 Act No. 337, Section 1, eff June 6, 2000; 2001 Act No. 53, Section 1, eff May 29, 2001.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 2000 amendment changed “shall” to “must” in the first sentence, and added provisions relating to sixteen‑ and seventeen‑year old assistants.

The 2001 amendment authorized one sixteen‑ or seventeen‑year‑old assistant poll manager for every two regular poll managers in a precinct, rather than a maximum of one sixteen‑ or seventeen‑year‑old assistant.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 51, Qualifications.

**SECTION 7‑13‑120.** Candidates and their relatives shall not be managers or clerks.

 (1) It shall be unlawful for a candidate or the spouse, parents, children, brothers or sisters of a candidate for public office to work as a manager or clerk of election at a polling place where such candidate’s name appears on the ballot.

 (2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 23:400.3:2; 1974 (58) 2209.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 51, Qualifications.

S.C. Jur. Elections Section 94, Statutory Provisions.

**SECTION 7‑13‑130.** Managers’ table; guard rail; general arrangement; preservation of right to vote and secrecy of ballot.

 The polling places shall be provided with a table for the managers. The polls shall be provided with a guard rail, so that no one except as herein authorized shall approach nearer than five feet to the booths in which the voters are preparing their ballots. The managers at each voting place shall arrange the table, desk or other place upon which the ballot boxes shall be placed so that there shall be no crowding or confusion immediately around the boxes, and suitable means shall be provided to enable each voter to approach the boxes and deposit his ballot without interference or hindrance. The right to vote of each person so entitled and the secrecy of the ballot shall be preserved at all times.

HISTORY: 1962 Code Section 23‑400.4; 1952 Code Section 23‑344; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 52, Setting Up Polling Area.

**SECTION 7‑13‑140.** Maintenance of order; police powers of managers.

 Managers of election are clothed with such police powers as may be necessary to carry out the provisions of this article. The managers shall possess 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. All peace officers shall answer all such calls for help in preserving the peace as may be made by the managers of election.

HISTORY: 1962 Code Section 23‑400.5; 1952 Code Section 23‑360; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 53, Police Powers.

Attorney General’s Opinions

Election managers may 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. S.C. Op.Atty.Gen. (April 1, 2016) 2016 WL 2607246.

Poll manager is public officer for dual office holding purposes. 1984 Op Atty Gen, No. 84‑124, p. 279.

State law does not appear to prohibit collecting signatures of registered electors on petitions at the polling places on election days as long as the procedure does not interfere with the election. 1994 Op Atty Gen, No. 94‑15, p. 36.

**SECTION 7‑13‑150.** Penalty for failure to assist in maintaining order.

 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.

HISTORY: 1962 Code Section 23‑400.6; 1952 Code Section 23‑361; 1950 (46) 2059; 1966 (54) 2340.

**SECTION 7‑13‑160.** Peace officers shall enter polling place only on request or to vote.

 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.

HISTORY: 1962 Code Section 23‑400.7; 1952 Code Section 23‑362; 1950 (46) 2059; 1966 (54) 2340.

Attorney General’s Opinions

Election managers may 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. S.C. Op.Atty.Gen. (April 1, 2016) 2016 WL 2607246.

**SECTION 7‑13‑170.** Procedure when managers fail to attend, take charge of, or conduct election.

 If all of the managers fail to attend at the same time and place appointed for holding the poll, or shall refuse or fail to act, or if no manager has been appointed for the poll, it is lawful for the voters present at the precinct voting place on that day to appoint from among the qualified voters of the precinct the managers to act as managers in the place and stead of the absent managers, and any one of the managers appointed shall administer the oath to the other managers. But if the duly appointed managers attend in a reasonable time, they shall take charge of and conduct the election.

HISTORY: 1962 Code Section 23‑400.8; 1952 Code Section 23‑343; 1950 (46) 2059; 1966 (54) 2340; 2010 Act No. 245, Section 5, eff June 2, 2010.

Effect of Amendment

The 2010 amendment made nonsubstantive changes to the section.

**SECTION 7‑13‑180.** Posting proposed constitutional amendments at polling place.

 Whenever an amendment to the Constitution of this State shall be voted upon at any election, the board of voter registration and elections of each county in the State shall have such amendment conspicuously posted at each voting precinct in the county upon the day of the election. Such printed amendments shall be furnished to the members of the county board of voter registration and elections by the Secretary of State.

HISTORY: 1962 Code Section 23‑400.23; 1952 Code Section 23‑321; 1950 (46) 2059; 1966 (54) 2340.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

NOTES OF DECISIONS

In general 1

1. In general

Posting does not cure defective ballot. A defect or insufficiency in a ballot is not cured by fact that the full text of proposing resolution is posted in each voting place as required by this section. Ex parte Tipton (S.C. 1956) 229 S.C. 471, 93 S.E.2d 640.

**SECTION 7‑13‑190.** Special elections to fill vacancies in office.

 (A) Except as otherwise provided in this code as to specific offices, whenever a vacancy occurs in office by reason of death, resignation, or removal and the vacancy in office is one which is filled by a special election to complete the term of office, this section applies.

 (B)(1) In partisan elections, whether seeking nomination by political party primary or political party convention, filing by these candidates shall open for the office at twelve o’clock noon on the third Friday after the vacancy occurs for a period to close eight days later at twelve o’clock noon. If seeking nomination by petition, the petitions must be submitted not later than twelve o’clock noon, sixty days prior to the election. Verification of these petitions must be made not later than twelve o’clock noon forty‑five days prior to the election. If seeking nomination by political party primary or political party convention, filing with the appropriate official is the same as provided in Section 7‑11‑15 and if seeking nomination by petition, filing with the appropriate official is the same as provided in Section 7‑11‑70.

 (2) A primary must be held on the eleventh Tuesday after the vacancy occurs. A runoff primary must be held on the thirteenth Tuesday after the vacancy occurs. The special election must be on the twentieth Tuesday after the vacancy occurs. If the twentieth Tuesday after the vacancy occurs is no more than sixty days prior to the general election, the special election must be held on the same day as the general election. If the filing period closes on a state holiday, then filing must be held open through the succeeding weekday. If the date for an election falls on a state holiday, the election must be set for the next succeeding Tuesday. For purposes of this section, state holiday does not mean the general election day.

 (C) If the office is not one for which there are partisan elections, then the filing must be opened at noon on the third Friday after the vacancy occurs for a period to close ten days later at noon. The filing must be made to the same entity to which the nonpartisan officeholders would normally file for office in a general election year. The election must be set for the thirteenth Tuesday after the vacancy occurs. Both the filing date and the election date are subject to the provisions in subsection (B) of this section regarding holidays.

 (D) Provided, however, if a vacancy occurs in more than one office in the same county requiring separate special elections to be held within a period of twenty‑eight days under the provisions of this section, the county board of voter registration and elections or other authority responsible for the conduct of the elections shall conduct all of the elections on the same date. The special elections must be held on the latest date required for an election during the twenty‑eight‑day period.

[Subsection (E) deleted effective January 1, 2018 by 2017 Act No. 15, Section 2, see Code Commissioner’s Note and Effect of Amendment Note below].

 (E)(1) A special election to fill a vacancy in an office is not required to be conducted if fourteen calendar days have elapsed since the filing period for that office has closed and:

 (a) only one person has filed for the office; and

 (b) no person has filed a declaration to be a write‑in candidate with the authority charged by law with conducting the election.

 (2) In such an event, the candidate who filed for the office is deemed elected and shall take office on the Monday following certification.

 (3) The provisions of this subsection also apply to municipal general elections.

 When no person has filed a declaration to be a write‑in candidate pursuant to this section, the candidate who filed for the office must be declared the winner by the authority charged by law with conducting the election, and the votes for the election must not be counted or otherwise tabulated. Nothing in this section requires a ballot containing the name of a person who has been declared the winner pursuant to this section to be reprinted to delete the winning candidate’s name or candidates’ names from the ballot.

HISTORY: 1986 Act No. 493, eff June 9, 1986; 1988 Act No. 363, Section 3, eff March 14, 1988; 1988 Act No. 380, eff March 14, 1988; 1991 Act No. 61, Section 1, eff May 22, 1991; 1996 Act No. 226, Section 4, eff February 12, 1996; 1996 Act No. 243, Section 1, eff March 4, 1996; 1998 Act No. 412, Section 4, eff June 9, 1998; 2003 Act No. 3, Section 2, eff upon approval (became law without the Governor’s signature on January 16, 2003); 2017 Act No. 15 (H.3150), Section 1, eff May 4, 2017; 2017 Act No. 15 (H.3150), Section 2, eff January 1, 2018.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

At the direction of the Code Commissioner, the reserving of (E), as provided by 2017 Act No. 15, Section 2, was removed as unnecessary.

Editor’s Note

2017 Act No. 15, Sections 3 to 5, provide as follows:

“SECTION 3. (A) For a federal special election for which the primary is held on May 2, 2017, the State Election Commission must provide a rank choice ballot to an individual who casts a ballot in accordance with the Uniformed and Overseas Citizens Absentee Voting Act.

“(B) This SECTION applies to any federal special election for which the primary is May 2, 2017.

“SECTION 4. SECTION 1 [amending (B)] takes effect upon approval by the Governor and applies to elections for which candidate filings begin on or after that date.

“SECTION 5. SECTION 2 [deleting (E)] takes effect on January 1, 2018, and applies to elections for which candidate filings begin on or after that date.”

Effect of Amendment

The 1988 amendment by Act No. 363, Section 3, in subsection (B) added language relating to nomination by political party primary, political party convention, or by petition, and also added references to Section 7‑11‑15.

The 1988 amendment by Act No. 380, added subsection (D), relating to the occurrence of a vacancy in more than one office in the same county.

The 1991 amendment in the second paragraph of (B) added “For purposes of this section, state holiday does not mean the general election day.”

The first 1996 amendment by Act No. 226, effective February 12, 1996, revised subsection (B) to provide filing times for persons seeking nomination by petition.

The second 1996 amendment by Act No. 243, effective March 4, 1996, further revised subsection (B) to provide for timing of a special election with respect to the general election.

The 1998 amendment, in the first paragraph of subsection (B), added “twelve o’clock” in two places in the first sentence and rewrote the second sentence.

The 2003 amendment added subsection (E).

2017 Act No. 15, Section 1, in (B), inserted the paragraph identifiers; in (B)(1), in the first sentence, substituted “eight days” for “ten days”; in (B)(2), substituted “twentieth Tuesday” for “eighteenth Tuesday” twice, in the fourth sentence, substituted “must be held” for “shall be held”, in the in the sixth sentence, substituted “the election” for “it”; and made other nonsubstantive changes.

2017 Act No. 15, Section 2, deleted (E), which had previously related to exemptions from holding certain special and general elections.

CROSS REFERENCES

Form and filing requirements of statement of intention, see Section 7‑11‑15.

Special election in event of substitution of nominee selected by primary election and nomination certified less than two weeks before date of general election, see Section 7‑11‑55.

Special election to fill vacancy upon death, disqualification or withdrawal of nominee selected by primary election, where nomination certified less than two weeks before date of general election, see Section 7‑11‑50.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 66‑82.

Attorney General’s Opinions

Section 7‑13‑190, though potentially useful as a model, does not provide a statutory minimum in terms of the time required to prepare for an election to fill a vacancy in the office of county auditor. Rather, if the Governor makes an appointment to fill such vacancy, a successor to the appointee must be selected at the next general election absent some circumstance making such an election a practical impossibility. S.C. Op.Atty.Gen. (July 13, 2012) 2012 WL 3057449.

If a special election for mayor is to be called because there are more than one hundred eighty days before the election, it must be called in sufficient time to permit the election to be held timely. 1994 Op Atty Gen, No. 94‑32, p. 77.

Section 4‑9‑90 requires special election to be held when there are more than 180 days before next general election. 1993 Op Atty Gen No. 93‑68.

Because Section 7‑13‑190(d) is silent as to all but special election, and since nomination of candidates is specifically discussed elsewhere, Section 7‑13‑190(d) most probably applies only to actual special election and not to primaries. 1991 Op Atty Gen, No. 91‑55, p 141.

Section 7‑13‑190(d) would require that both special elections to fill 2 vacant House seats in county should be held on later of 2 dates bearing 28‑day period. 1991 Op Atty Gen, No. 91‑55, p 141.

Primary election to fill vacant Senate seat may not be scheduled for general election day, which is recognized legal holiday of State. 1990 Op Atty Gen No. 90‑50.

A gubernatorial appointment with the advice and consent of the Senate is not final until the commission is issued by the Governor; the special election pursuant to Section 8‑1‑140 would be triggered upon the date when the Governor issues the commission under seal. 1989 Op Atty Gen, No. 89‑72, p 187.

The President of the Senate is required to issue writs of election to fill vacancies in the Senate pursuant to the provisions of Article III, Section 25 of the State Constitution and Act No. 493 of 1986. Because Section 7‑13‑190 has already received preclearance, submissions to the Justice Department prior to scheduling or holding the special election are not necessary. 1986 Op Atty Gen, No. 86‑120, p. 351.

ARTICLE 3

Ballots for General and Special Elections

**SECTION 7‑13‑310.** Kinds of general election ballots; different colored paper shall be used.

 In the general elections provided for in Section 7‑13‑10, there shall be four kinds of ballots called, respectively: “Official Ballot for Presidential Elector”; “Official Ballot for State Offices, United States Senator and Members of Congress”; “Official Ballot for State Senator, Member of the House of Representatives, County, Circuit and Other Offices” and “Official Ballot on Constitutional Amendments or other Propositions Submitted.” Each such kind of ballot shall be printed upon different colored paper as shall be provided for by the executive director.

HISTORY: 1962 Code Section 23‑400.11; 1952 Code Section 23‑308; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2124.

CROSS REFERENCES

Ballots for House of Delegates Representatives, see Section 2‑1‑30.

Ballots for multiple offices, see Section 7‑1‑60.

Constitutional provision that elections are to be by secret ballot, see SC Const, Art 2, Section 1.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 152 et seq.

**SECTION 7‑13‑315.** Joint election of Governor and Lieutenant Governor; single vote.

 The State Election Commission shall ensure that the Governor and Lieutenant Governor must be elected jointly so that each voter casts a single vote to elect a Governor and Lieutenant Governor.

HISTORY: 2018 Act No. 142 (H.4977), Section 3, eff March 15, 2018.

**SECTION 7‑13‑320.** Ballot standards and specifications.

 General election ballots shall conform to the following standards and specifications:

 (A) The ballot shall be printed on paper of such thickness that the printing cannot be distinguished from the back and shall be of such size and color as directed by the State Election Commission. If more than one ballot is to be used in any election, each such ballot shall be printed upon different colored paper;

 (B) Across the top of the ballot shall be printed “Official Ballot, General Election,” beneath which shall be printed the date of the election, the county and the precinct. Above the caption of each ballot shall be one stub, with a perforated line between the stub and the top of the ballot. The stub shall have printed thereon “Official Ballot, General Election” and then shall appear the name of the county, the precinct and the date of the election. On the right side there shall be a blank line under which there shall be “Initials of Issuing Officer.” Stubs on ballots for each precinct shall be prenumbered consecutively, beginning with No. 1;

 (C) On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice President of the United States nominated by each political party qualified under the provisions of Section 7‑9‑10 and those nominated by petition. A separate column shall be assigned to each political party with candidates and to each separate petition slate of candidates on the ballot and each party and each petition candidate’s columns shall be separated by distinct black lines. At the head of each column the party or petition name shall be printed in large type and below it a circle, one‑half inch in diameter, and below the circle the names of the party’s and petition candidates for President and Vice President in that order. On the face of the ballot above the party and petition candidate’s column division the following instruction shall be printed in heavy black type:

 a. To vote this ballot make a cross (X) mark in the circle below the name of the political party or petition column for whose candidates you wish to vote.

 b. A vote for the names of a political party’s candidates or petition candidates for President and Vice President is a vote for the electors of that party or petition candidates, the names of whom are on file with the Secretary of State.

 On the bottom of the ballot shall be printed an identified facsimile of the signature of the Executive Director of the State Election Commission.

 (D) The names of candidates offering for any other office shall be placed in the proper place on the appropriate ballot, stating whether it is a state, congressional, legislative, county or other office.

 (E) The names of the several officers to be voted for and the tickets of the parties and petition candidates shall be placed on the ballots in an order as arranged by the State Election Commission as to those ballots for which it is responsible for distribution and by the board of voter registration and elections members for the respective counties as to the ballots for which they are responsible for distribution, including those for State Senator and member of the House of Representatives. If the State Senator or member of the House of Representatives or any other officer is to be elected from more than one county, the board of voter registration and elections members from the various counties from which they are to be elected shall assure that there shall be uniformity of placement on the ballots of their respective counties and should the board members fail to agree within sixty days prior to the general election, and upon receipt of written certification by at least one commissioner, that they have failed to act, the State Election Commission shall determine the order of placing the names on the ballots.

 (F) Each county board of voter registration and elections must provide a copy of each ballot style to be used for primary, general, and special elections in the absentee precinct in the county to the Executive Director of the State Election Commission not later than September fifteenth in the case of general elections, and not later than forty days prior to the date of the election in the case of special and primary elections. If the ballot styles are not available by these deadlines, the executive director must determine when absentee ballots for that county will be available. If a determination is made that absentee ballots will not be available in sufficient time to adequately effectuate absentee voting, the executive director is empowered to direct the county board of voter registration and elections to provide the blank ballots provided by Section 7‑15‑360 until the regular ballots are available. The executive director must also notify the chairman of the county’s legislative delegation of his findings and the action taken.

HISTORY: 1962 Code Section 23‑400.12; 1952 Code Section 23‑309; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2124; 1982 Act No. 419, Section 2, eff June 8, 1982; 1984 Act No. 402, Section 1, eff May 24, 1984; 2000 Act No. 236, Section 4, eff March 7, 2000; 2006 Act No. 223, Section 2, eff February 3, 2006.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1982 amendment deleted items (C) and (D) as they appear in the parent volume, and inserted new items (C) through (E).

The 1984 amendment added “or petition column” to subitem a of item (C), and added “or petition candidates” to subitem b of item (C).

The 2000 amendment added subsection (F).

The 2006 amendment deleted the last undesignated paragraph of subsection (C) requiring to separate ballots for presidential electors.

CROSS REFERENCES

Procedure to be followed for election of presidential electors, see Section 7‑19‑70.

LIBRARY REFERENCES

29 C.J.S., Elections Section 156.

Attorney General’s Opinions

Neither one’s title nor nickname may be printed on a general election ballot. 1967‑68 Op Atty Gen, No. 2489, p 161.

One may not run as a write‑in candidate for magistrate at a general election. 1967‑68 Op Atty Gen, No. 2581, p 285.

NOTES OF DECISIONS

In general 1

1. In general

Derivative of one’s given name, properly acquired under common law and used in good faith for honest purposes, is not proscribed by Section 7‑13‑320. Stevenson v. Ellisor (S.C. 1978) 270 S.C. 560, 243 S.E.2d 445.

Candidate was entitled to have name “Nancy” printed on ballot where “Nancy” was derivative of her given name “Ferdinan” and she was usually and commonly known as Nancy. Stevenson v. Ellisor (S.C. 1978) 270 S.C. 560, 243 S.E.2d 445. Election Law 324

Supreme Court decision permitting use of derivative of candidate’s Christian or given name on ballot does not extend to use of nicknames bearing no relation to person’s given name. Stevenson v. Ellisor (S.C. 1978) 270 S.C. 560, 243 S.E.2d 445.

Printing names of President and Vice‑President is permissive and not mandatory. The names of the President and the Vice‑President for whom the electors intend to vote “may” be printed above the names of the candidates for the offices of electors. The legislature has not used the word “shall” and accordingly, the printing is permissive and not mandatory. Wallace v. Thornton (S.C. 1968) 251 S.C. 319, 162 S.E.2d 273. Election Law 324

As to injunction against the Secretary of State to prevent the use of George Wallace’s name on the ballot of electors nominated by The South Carolina Independent Party, see Wallace v. Thornton (S.C. 1968) 251 S.C. 319, 162 S.E.2d 273.

Former statute did not require for use at general election single ballots containing names of all candidates for any office, State or Federal. Gardner v. Blackwell (S.C. 1932) 167 S.C. 313, 166 S.E. 338. Election Law 316

The fact that ballots used in an election upon a liquor question had a heading which merely designated the county and the election, and which was the same on ballots used both for and against the dispensary, does not make such ballots illegal under this section. Rawl v. McCown (S.C. 1914) 97 S.C. 1, 81 S.E. 958. Intoxicating Liquors 34(5)

**SECTION 7‑13‑325.** Use of candidate’s given name, derivative thereof, or nickname on ballot.

 The name of a candidate authorized by law to appear on a ballot in a general, special, or primary election in this State for any office may be one of the following or a combination of them:

 (1) the candidate’s given name;

 (2) a derivative of the candidate’s given name properly acquired under the common law and used in good faith for honest purposes; or

 (3) a nickname which bears no relation to the candidate’s given name but which is used in good faith for honest purposes and does not exceed fifteen letters on the ballot.

 The derivative name or nickname may not imply professional or social status, an office, or military rank.

 A candidate wanting to use a derivative name or a nickname, as permitted by items (2) and (3), respectively, of this section, shall notify the authority responsible by law for conducting the election, in writing, before a deadline for receiving or certifying candidates’ names for inclusion on the ballot, the name he wishes to have appear and shall present evidence required by the authority conducting the election that the name indicated is his derivative name or nickname. In deciding whether the name indicated is the candidate’s derivative name or nickname, the authority conducting the election shall consider appropriate criteria, including, but not limited to, the following:

 (a) whether the name is the designation by which the candidate is usually and commonly known in the community in which he resides or called by other persons;

 (b) whether the name is the designation by which the candidate calls himself or which he has adopted;

 (c) whether the name is the designation under which the candidate transacts private and official business.

 The State Election Commission may promulgate regulations to carry out the provisions of the section, including, but not limited to, forms to be completed by the candidate and the deadline by which a candidate shall indicate the name he wished to have appear on the ballot.

HISTORY: 1987 Act No. 180 Section 1, eff June 30, 1987; 1989 Act No. 106, Section 1, eff May 31, 1989.

Effect of Amendment

The 1989 amendment provides that if a derivative name or nickname is to be used, the authority responsible by law for conducting the election must be notified in writing.

LIBRARY REFERENCES

29 C.J.S., Elections Section 161.

**SECTION 7‑13‑330.** Form of ballot; instructions.

 The arrangement of general election ballots containing the names of candidates for office must conform as nearly as possible to the following plan, with a column or columns added in case of nomination by petition and a blank column added for write‑in votes, and must contain the specified instructions there set forth and no other:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
|   | GENERAL ELECTION OFFICIAL BALLOT |   |
|   | No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, SOUTH CAROLINA |   |
|   |   |   | November \_\_\_, \_\_\_\_\_ |   |   |
|   |   |   | \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |   |   |
|   |   |   | Initials of Issuing Officer |   |   |
|   | OFFICIAL BALLOT |   |
|   | GENERAL ELECTION |   |
|   | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, South Carolina |   |
|   |   |   | November \_\_\_, \_\_\_\_\_ |   |   |
|   |   |   | Precinct \_\_\_\_\_\_\_\_\_\_ |   |   |

 INSTRUCTIONS—To vote a straight party ticket, make a cross (X) in the circle (O) under the name of your party. Nothing further need or should be done. To vote a mixed ticket, or in other words for candidates of different parties or petition candidates, omit making a cross (X) mark in the party circle at the top and make a cross (X) in the voting square [] opposite the name of each candidate on the ballot for whom you wish to vote. If you wish to vote for a candidate not on any ticket, write or place the name of such candidate on your ticket opposite the name of the office. Before leaving the booth, fold the ballot so that the initials of the manager may be seen on the outside of the ballot.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   |   |   | Nomination by |
|   | Name of Party | Name of Party | Petition |
| Names of Office | 0 | 0 |   |
| STATE | Governor | Governor | Governor |
| Governor | [] Name of | [] Name of | [] Name of |
|   | Candidate | Candidate | Candidate |
| Lieutenant | Lieut. Governor | Lieut. Governor | Lieut. Governor |
| Governor | [] Name of | [] Name of | [] Name of |
|   | Candidate | Candidate | Candidate |
| Secretary of | Sec. of State | Sec. of State | Sec. of State |
| State | [] Name of | [] Name of | [] Name of |
|   | Candidate | Candidate | Candidate |
| CONGRES‑ | U.S. Senator | U.S. Senator | U.S. Senator |
| SIONAL | [] Name of | [] Name of | [] Name of |
| Senator | Candidate | Candidate | Candidate |
| Representative | U.S. Repre‑ | U.S. Repre‑ | U.S. Repre‑ |
| in Congress | sentative | sentative | sentative |
|   | [] Name of | [] Name of | [] Name of |
| District | Candidate | Candidate | Candidate |

HISTORY: 1962 Code Section 23‑400.13; 1952 Code Section 23‑310; 1950 (46) 2059; 1966 (54) 2340; 2000 Act No. 236, Section 5, eff March 7, 2000.

Effect of Amendment

The 2000 amendment substituted “must” for “shall” in two places in the first sentence, deleted “19” in two places in the official ballot form and, in the Instructions, added “or petition candidates” in the third sentence and “of the ballot” at the end of the fourth sentence.

LIBRARY REFERENCES

29 C.J.S., Elections Section 156.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 61, Assistance to Voters‑ Write‑In Vote and Write‑In Absentee Ballot.

Attorney General’s Opinions

Omission of straight ticket circle. The straight ticket circle may be left off the general election ballot upon the request of a political party or nominee by petition where a party has nominated only one county candidate. 1965‑66 Op Atty Gen, No. 2137, p 265.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in United Citizens Party of South Carolina v. South Carolina State Election Commission (D.C.S.C. 1970) 319 F.Supp. 784.

The instructions provided in this section are not to be construed with such inflexible literalness as to render the slightest deviation from them fatal to the ballot. They are directory, and failure to follow them to the letter will not invalidate the ballot unless thereby such doubt has been cast upon the voter’s intention, as evidenced by his ballot, that to determine such intention would involve speculation rather than reasonable inference. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10. Election Law 468

Neither this section nor any other provision of the present general election law requires, expressly or by necessary implication, that in order to vote for a candidate other than the party nominee, the voter must not only write the name of his candidate on the ballot opposite the name of the office, but also scratch out the name of the party nominee. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

This section does not, either expressly or by necessary implication, forbid the counting of a ballot for a “write‑in” candidate because the voter, in addition to writing in the name of his candidate, has marked the party circle. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

**SECTION 7‑13‑335.** Arrangement of names on certain ballots.

 The State Election Commission or the local entity responsible for printing general or special election ballots or the arrangement of a ballot by mechanical or electronic means shall conform these ballots to the requirements of Section 7‑13‑330. The names of candidates in nonpartisan and at‑large, multi‑seat races must be listed in alphabetical order.

HISTORY: 1996 Act No. 242, Section 1, eff March 4, 1996.

**SECTION 7‑13‑340.** Printing and distribution of ballots.

 All ballots cast in general elections for national, State, county, municipal, district and circuit officers in the towns, counties, districts, circuits, cities and other political divisions shall be printed and distributed at public expense. The printing and distribution of all ballots, other than the county, State Senator, member of the House of Representatives, local or circuit ballots herein designated, the ballots for elections in cities and towns and the ballots for election on bonds or other local measures, shall be arranged and handled by the State Election Commission and shall be paid for by the State. The State Election Commission shall have all necessary ballots for elections for presidential electors, State officers, United States Senators and members of Congress printed, and shall deliver such ballots to the various county board of voter registration and elections at least ten days prior to the date of the election and the county board of voter registration and elections shall place such ballots in ballot boxes for distribution to the election managers of the various precincts.

 The printing and distribution of ballots in all State Senate, member of the House of Representatives, county, local and circuit elections shall be arranged and handled by the board of voter registration and elections members of the several counties and shall be paid for by the respective counties, and the board members shall place such ballots in ballot boxes for distribution to the election managers of the various precincts. The printing and distribution of ballots in all municipal elections shall be arranged and handled by the municipal authorities conducting such elections and shall be paid for by the municipalities.

 The terms “municipal” and “municipalities” as used in this section shall be construed to include school districts, public service districts and like political subdivisions.

HISTORY: 1962 Code Section 23‑400.14; 1952 Code Section 23‑311; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2124.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 12, Duties.

Attorney General’s Opinions

A county’s governing body is responsible for conducting and paying for municipal annexation elections; state law does not provide for what authority is responsible for funding special purpose district elections. 1989 Op Atty Gen, No. 89‑59, p 147.

**SECTION 7‑13‑350.** Certification of candidates; verification of qualifications.

 (A) Except as otherwise provided in this section, the nominees in a party primary or party convention held under the provisions of this title by any political party certified by the commission for one or more of the offices, national, state, circuit, multi‑county district, countywide, less than countywide, or municipal to be voted on in the general election, held on the first Tuesday following the first Monday in November, must be placed upon the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot if the names of the nominees are certified, in writing, by the political party chairman, vice‑chairman, or secretary to the authority, for general elections held under Section 7‑13‑10, not later than twelve o’clock noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than twelve o’clock noon on the following Monday; and for a special or municipal general election, by at least twelve o’clock noon on the sixtieth day prior to the date of holding the election, or if the sixtieth day falls on Sunday, by twelve o’clock noon on the following Monday. Political parties nominating candidates by primary or convention must verify the qualifications of those candidates prior to certification to the authority charged by law with preparing the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which he has filed. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which he has filed shall not be nominated and certified, and such candidate’s name shall not be placed on a general, special, or municipal election ballot.

 (B) Candidates for President and Vice President must be certified not later than twelve o’clock noon on the first Tuesday following the first Monday in September to the State Election Commission.

HISTORY: 1962 Code Section 23‑400.15; 1952 Code Section 23‑312; 1950 (46) 2059; 1958 (50) 1860; 1959 (51) 285; 1966 (54) 2340; 1968 (55) 2316; 1974 (58) 2866; 1976 Act No. 644; 1984 Act No. 263, Section 3, eff January 27, 1984; 1984 Act No. 405, Section 1, eff May 24, 1984; 1986 Act No. 344, Section 1, eff March 7, 1986; 1998 Act No. 412, Section 5, eff June 9, 1998; 2000 Act No. 236, Section 6, eff March 7, 2000; 2000 Act No. 392, Section 3, eff August 1, 2000; 2003 Act No. 3, Section 3, eff upon approval (became law without the Governor’s signature on January 16, 2003); 2015 Act No. 79 (H.3154), Section 1, eff June 11, 2015.

Editor’s Note

1992 Act No. 289, Section 7 effective March 12, 1992 reads as follows:

“SECTION 7. For elections held in 1992 only, if run‑off primary elections are necessary they must be held on September 8, 1992. Notwithstanding the provisions of Section 7‑13‑350, Code of Laws of South Carolina, 1976, the results of all elections must be certified to the appropriate state or county election commissioners by 12:00 noon on September 18, 1992.”

1997 Act No. 1, Section 6, eff February 12, 1997, provides as follows:

“SECTION 6. For purposes of the 1997 election for the members of the House of Representatives to be elected from those election districts revised by the provisions of Section 2‑1‑25 of the 1976 Code, as amended by Section 1 of this act, and for the members of the Senate to be elected from those election districts revised by Section 4 of this act, the following provisions apply:

“(1) Notwithstanding the provisions of Section 7‑11‑15 of the 1976 Code, the dates for filing for all candidates seeking nomination by a political party primary or political party convention are between noon on June second and noon on June sixteenth.

“(2) Notwithstanding the provisions of Section 7‑11‑210 of the 1976 Code, the date for filing the notice of candidacy and pledge is by noon on June sixteenth.

“(3) Notwithstanding the provisions of Section 7‑13‑40 of the 1976 Code, certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary to the State Election Commission or the county election commission, whichever is responsible under law for preparing the ballot, not later than noon on June eighteenth.

“(4) Notwithstanding the provisions of Section 7‑13‑40 of the 1976 Code, the date for primary elections is the second Tuesday in August.

“(5) For these elections held in 1997 only, if run‑off primary elections are necessary they must be held on August twenty‑sixth.

“(6) Notwithstanding the provisions of Section 7‑13‑351 of the 1976 Code, all candidates seeking nomination by petition must file these petitions with the State Election Commission no later than noon on September ninth.

“(7) Notwithstanding the provisions of Section 7‑13‑350 of the 1976 Code, the names of all nominees to be placed on the special election ballots must be certified by the respective political party to the appropriate election commissioners by noon on September eleventh.”

Effect of Amendment

The 1976 amendment added the provision that certification of names be “by the political party chairman, vice‑chairman or secretary in the case of a party candidate and by the person authorized to receive a petition when the candidate is not a party nominee,” and substituted “thirtieth day” for “forty‑fifth day” in the two places that it appears in regard to special and municipal elections.

The first 1984 amendment deleted references to nominees by petition.

The second 1984 amendment added the provision pertaining to special or municipal elections and substituted “must” or “shall” in the first sentence.

The 1986 amendment substituted “countywide, or less than countywide,” for “or county” and made grammatical changes.

The 1998 amendment added “or municipal” and “, held on the first Tuesday following the first Monday in November,” substituted “forty‑fifth” for “thirtieth”, in two places, and made nonsubstantive changes throughout the section.

The first 2000 amendment (by Act No. 236) rewrote this section.

The second 2000 amendment (by Act No. 392) designated the existing section as subsection (A), added at the beginning of new subsection (A), “Except as otherwise provided in this section,” and added subsection (B).

The 2003 amendment, in subsection (B), substituted “September tenth” for “August thirtieth”.

2015 Act No. 79, Section 1, in (B), substituted “the first Tuesday following the first Monday in September to the State Election Commission” for “September tenth to the State Election Commission, or if September tenth falls on Sunday, not later than twelve o’clock noon on the following Monday”.

CROSS REFERENCES

Decertification of a political party for failure to certify candidates as provided in this section, see Section 7‑9‑10.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 161 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 39, Placing Convention Nominee on General Election Ballot.

S.C. Jur. Elections Section 45, Placing Primary Nominee on General Election Ballot.

Attorney General’s Opinions

Candidates for countywide and less than countywide offices should be certified by state parties and, if one so exists, the respective county party. S.C. Op.Atty.Gen. (March 6, 2014) 2014 WL 1398579.

The Legislature likely intended to leave state parties with the discretion to determine whether candidates for countywide or less than countywide offices should be certified by the state party or the respective county party, if one so exists. S.C. Op.Atty.Gen. (March 6, 2014) 2014 WL 1398579.

Multiple candidacy. It appears that there are no provisions of law dealing with multiple candidacy in South Carolina, and in absence of such provisions, there may be multiple nominations of one name by several parties. 1969‑70 Op Atty Gen, No 2996, p 275.

Deadline for certifying names of county nominees picked by convention to county board of elections. An ambiguity exists between the provisions of Code 1962 Section 23‑264 and Section 23‑312 (now this section [Code 1962 Section 23‑400.15]), but this section [Code 1962 Section 23‑400.15] controls and the names of nominees for county offices made by convention should be placed on the ballot if those names are certified to the county board of elections at least twenty days prior to the next general election. 1965‑66 Op Atty Gen, No. 2175, p 308.

Appointed office not to be placed on ballot. County treasurer, being an appointed office, should not be placed on general election ballot. 1965‑66 Op Atty Gen, No. 2049, p 132.

NOTES OF DECISIONS

In general 1

1. In general

Unclear whether decision not to conduct primaries would bring section into effect. It is not clear under Code 1962 Section 23‑264 whether a decision by the established political parties in South Carolina not to conduct primaries would eliminate the June filing under Code 1962 Section 23‑264 and bring this section [Code 1962 Section 23‑400.15] into effect. Toporek v. South Carolina State Election Commission (D.C.S.C. 1973) 362 F.Supp. 613.

Cited in United Citizens Party of South Carolina v. South Carolina State Election Commission (D.C.S.C. 1970) 319 F.Supp. 784.

Under statute governing certification of candidates, when a municipality chooses to hold its election to coincide with the general election occurring on the first Tuesday following the first Monday in November, a winner of the primary election must be certified no later than August 15. Willis v. Wukela (S.C. 2008) 379 S.C. 126, 665 S.E.2d 171. Election Law 450

**SECTION 7‑13‑351.** Nominees by petition.

 Any nominee by petition for one or more of the national, state, circuit, multi‑county district, countywide, or less than countywide offices, to be voted on in the general election must be placed upon the appropriate ballot by the officer, commissioners, or other authority charged by law with preparing the ballot if the petition is submitted to the officer, commissioner, or other authority, as the case may be, for general elections held under Section 7‑13‑10, not later than twelve o’clock noon on July fifteenth or, if July fifteenth falls on Saturday or Sunday, not later than twelve o’clock noon on the following Monday. At the time the petition is submitted, the authority charged with accepting it shall issue a receipt to the person submitting the petition which must reflect the date it was submitted and the total number of signatures contained in the petition. The county board of voter registration and elections of each respective county must check the petition at the request of the authority charged with printing the ballot for that office and must certify the results to the authority not later than twelve o’clock noon August fifteenth or, if August fifteenth falls on Sunday, not later than twelve o’clock noon on the following Monday.

 The petition of any candidate in any special election, including municipal special elections, must be submitted to the authority charged with printing the ballot for those offices not later than twelve o’clock noon on the sixtieth day prior to the date of the holding of the election, or if the sixtieth day falls on Sunday, by not later than twelve o’clock noon on the following Monday. At the time a petition is submitted, the authority charged with accepting it must issue a receipt to the person submitting the petition which must reflect the date the petition was submitted and the total number of signatures contained in the petition. The candidate submitting the petition must certify, on a form designed and provided by the State Election Commission, that he meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. The board of voter registration and elections of each respective county must check the petition at the request of the authority charged with printing of the ballots for that office and must certify the results thereof to the authority not later than twelve o’clock noon on the forty‑fifth day prior to the date of holding the election, or if the forty‑fifth day falls on Sunday, by twelve o’clock noon on the following Monday.

 Once submitted for verification, a petition for nomination of a candidate for any office may not be returned to the petitioner, but must be retained by the authority to whom the petition was submitted and must become a part of the records of the election for which the petition was submitted.

 In the event of an emergency declared by the Governor and the conditions precipitating the emergency declaration prevent a candidate from filing the nominating petition within the time required by this section, the candidate has an additional five days to submit the nominating petition to the appropriate office.

 The authority to whom a petition is submitted must verify that qualifications of each potential petition candidate prior to certification of that candidate to be placed on the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which the petition is submitted. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office sought shall not have his name placed on the ballot.

HISTORY: 1984 Act No. 263, Section 4, eff January 27, 1984; 1986 Act No. 344, Section 2, eff March 7, 1986; 1991 Act No. 62, Section 1, eff May 27, 1991; 1998 Act No. 412, Section 6, eff June 9, 1998; 2000 Act No. 236, Section 7, eff March 7, 2000.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

1997 Act No. 1, Section 6, eff February 12, 1997, provides as follows:

“SECTION 6. For purposes of the 1997 election for the members of the House of Representatives to be elected from those election districts revised by the provisions of Section 2‑1‑25 of the 1976 Code, as amended by Section 1 of this act, and for the members of the Senate to be elected from those election districts revised by Section 4 of this act, the following provisions apply:

“(1) Notwithstanding the provisions of Section 7‑11‑15 of the 1976 Code, the dates for filing for all candidates seeking nomination by a political party primary or political party convention are between noon on June second and noon on June sixteenth.

“(2) Notwithstanding the provisions of Section 7‑11‑210 of the 1976 Code, the date for filing the notice of candidacy and pledge is by noon on June sixteenth.

“(3) Notwithstanding the provisions of Section 7‑13‑40 of the 1976 Code, certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary to the State Election Commission or the county election commission, whichever is responsible under law for preparing the ballot, not later than noon on June eighteenth.

“(4) Notwithstanding the provisions of Section 7‑13‑40 of the 1976 Code, the date for primary elections is the second Tuesday in August.

“(5) For these elections held in 1997 only, if run‑off primary elections are necessary they must be held on August twenty‑sixth.

“(6) Notwithstanding the provisions of Section 7‑13‑351 of the 1976 Code, all candidates seeking nomination by petition must file these petitions with the State Election Commission no later than noon on September ninth.

“(7) Notwithstanding the provisions of Section 7‑13‑350 of the 1976 Code, the names of all nominees to be placed on the special election ballots must be certified by the respective political party to the appropriate election commissioners by noon on September eleventh.”

Effect of Amendment

The 1986 amendment, in the first paragraph, substituted “, countywide or less than countywide” for “or county” and substituted “shall” for “must”.

The 1991 amendment added the fourth paragraph, relative to extending the time for filing the petition in the event of an emergency.

The 1998 amendment, in the second paragraph, deleted “or municipal” preceding “election” in the first sentence, added “, including municipal special elections,” and “twelve o’clock”, and substituted “sixtieth” for “forty‑fifth” in two places and “forty‑fifth” for “thirtieth” in two places.

The 2000 amendment rewrote this section.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 46, Statutory Requirements.

S.C. Jur. Elections Section 47, Placing Petition Nominee on General Election Ballot.

**SECTION 7‑13‑352.** Date by which statement of candidacy must be filed; verification of candidates’ qualifications.

 Any candidate for a nonpartisan office, multi‑county district, countywide, or less than countywide, including municipal offices, to be voted on at the time of the general election, who qualifies by statement of candidacy shall file the statement of candidacy with the authority responsible by law for conducting the election not later than twelve o’clock noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than twelve o’clock noon on the following Monday. Each candidate must affirm, in writing, that he meets, or will meet by the time of the election, or as otherwise required by law, the qualifications for the office sought. The authority with whom statements of candidacy are filed must verify that each candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office sought shall not have his name placed on the ballot.

HISTORY: 1986 Act No. 344, Section 3, eff March 7, 1986; 1998 Act No. 412, Section 7, eff June 9, 1998; 2000 Act No. 236, Section 8, eff March 7, 2000.

Effect of Amendment

The 1998 amendment added “including municipal offices,”.

The 2000 amendment rewrote this section.

**SECTION 7‑13‑355.** Time for submitting question to election commission for submission as referendum to electors.

 No question may be submitted to the qualified electors in a referendum held at the time of a general election unless the question is submitted to the appropriate election commission to be placed on the ballot no later than 12:00 noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than 12:00 noon on the following business day.

HISTORY: 1987 Act No. 131 Section 1, eff June 3, 1987; 2000 Act No. 236, Section 9, eff March 7, 2000.

Effect of Amendment

The 2000 amendment substituted “August fifteenth” for “September first” in two places and added “Saturday or”.

United States Supreme Court Annotations

Free speech, public records, disclosure, referendum petitions, see John Doe No. 1 v. Reed, 2010, 130 S.Ct. 2811, 561 U.S. 186, 177 L.Ed.2d 493.

Supreme Court’s view regarding First Amendment guarantees of Freedom of Speech or of the Press as applied to electoral or Referendum process. 71 L Ed 2d 1000.

Attorney General’s Opinions

The Town of Elgin’s ordinance calling for a referendum on the issuance of a temporary permit for the possession, sale, and consumption of alcoholic beverages must be submitted to its election commission at least sixty days prior to the Town’s general election. S.C. Op.Atty.Gen. (Sept. 28, 2010) 2010 WL 3896163.

The provisions of Section 5‑5‑20 which is a special law concerning home rule referendums would control over the general provisions established by Section 7‑13‑355. Thus, a municipality may hold a referendum to change the form of government on January 12, 1988, the date of the regularly scheduled town election. 1987 Op Atty Gen, No. 87‑88, p 237.

**SECTION 7‑13‑360.** Place on ballot for write‑in names.

 The ballots shall also contain a place for voters to write in the name of any other person for whom they wish to vote except on ballots for the election of the President and Vice President.

HISTORY: 1962 Code Section 23‑400.17; 1952 Code Section 23‑314; 1950 (46) 2059; 1966 (54) 2340; 1982 Act No. 419, Section 4, eff June 8, 1982.

Effect of Amendment

The 1982 amendment added “except on ballots for the election of the President and Vice President.” at the end of the paragraph.

LIBRARY REFERENCES

29 C.J.S., Elections Section 156.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 61, Assistance to Voters‑ Write‑In Vote and Write‑In Absentee Ballot.

**SECTION 7‑13‑370.** Death, withdrawal or disqualification of candidate after name printed on ballot.

 If any candidate dies, withdraws or otherwise becomes disqualified after his name has been printed on an official election ballot and if any person is nominated, as authorized by law, to fill such vacancy, the name of the candidate so nominated to fill such vacancy need not be printed upon the ballots, but the name of such candidate so nominated shall be certified by the party executive committee making the nomination to the officer, commissioners or other authority charged with the duty of printing such ballots and a vote cast by a voter for the name of the candidate printed on the ballot who has either died, withdrawn or otherwise become disqualified shall be counted as a vote for the candidate subsequently nominated to fill such vacancy whose name is on file with such officer, board of voter registration and elections, or other authority.

HISTORY: 1962 Code Section 23‑400.18; 1952 Code Section 23‑315; 1950 (46) 2059; 1966 (54) 2340.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

LIBRARY REFERENCES

29 C.J.S., Elections Section 167.

**SECTION 7‑13‑380.** Reprinting ballots to delete name of deceased or withdrawn candidate is optional.

 After the official ballots have been printed by the proper officer, board of voter registration and elections, or other authority, the death or withdrawal of a candidate whose name is printed on the official ballot does not require the officer, board of voter registration and elections, or other authority to reprint the official ballots, but the officer, board of voter registration and elections, or other authority having jurisdiction over the printing and distribution of the ballots concerned may (1) cause the ballots to be reprinted and be substituted in all respects for the first printed ballots if this substitution is considered feasible and advisable or (2) affix a blank label to cover the name of the deceased or withdrawn candidate on voting systems where possible or appropriate.

HISTORY: 1962 Code Section 23‑400.19; 1952 Code Section 23‑316; 1950 (46) 2059; 1966 (54) 2340; 1996 Act No. 434, Section 8, eff June 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1996 amendment substituted “does not require the officer” for “shall not require such officer”, substituted “may (1) cause the ballots” for “may cause such ballots”, substituted “if this substitution is considered feasible and advisable or (2) affix a blank label to cover the name of the deceased or withdrawn candidate on voting systems where possible or appropriate” for “if such substitution is deemed feasible and advisable”, and made nonsubstantive changes.

LIBRARY REFERENCES

29 C.J.S., Elections Section 167.

**SECTION 7‑13‑390.** Limitations on withdrawal of candidacy.

 After the proper officer, board of voter registration and elections or other authority has been notified of the nomination, as hereinbefore specified, of any candidate for office, he shall not withdraw such nomination unless upon the written request of the candidate so nominated made at least thirty days before the day of election.

HISTORY: 1962 Code Section 23‑400.20; 1952 Code Section 23‑317; 1950 (46) 2059; 1966 (54) 2340.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑400.** Form of ballot when questions are submitted.

 The form of ballot in an election on the issuance of bonds or in which any other question or issue is submitted to a vote of the people shall be a statement of the question or questions and shall thereafter have the following words:

 In favor of the question or issue (as the case may be)[]

 Opposed to the question or issue (as the case may be)[]

 The voter shall be instructed in substance, if he wishes to vote in favor of the proposition to place a check or cross mark in the square after the words first above written and if he wishes to vote against the proposition to place a check or cross mark in the square after the words second above written.

 Nothing herein shall be construed to prevent any party from submitting to party members any question or issue.

HISTORY: 1962 Code Section 23‑400.21; 1952 Code Section 23‑318; 1950 (46) 2059, 2355; 1966 (54) 2340.

CROSS REFERENCES

Form of ballot in election as to issuance of municipal general obligation bonds, see Section 5‑21‑310.

LIBRARY REFERENCES

29 C.J.S., Elections Section 170.

Attorney General’s Opinions

A county council cannot combine multiple separate issues for bond issuance into one referendum question. S.C. Op.Atty.Gen. (September 30, 2016) 2016 WL 5820153.

Advisory referendum requires legislative authority. 1969‑70 Op Atty Gen, No. 2935, p 190.

Methods of providing for appearance of questions on ballot. The available methods of providing for the appearance of questions and issues on ballots is by consent of the political party conducting the election in the case of primary elections, and by statutory authorization in the case of general elections. 1965‑66 Op Atty Gen, No. 2002, p 63.

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1. In general

Cited in Bolt v. Cobb (S.C. 1954) 225 S.C. 408, 82 S.E.2d 789.

Secrecy of ballot is essential. State ex rel. Birchmore v. State Bd. of Canvassers (S.C. 1907) 78 S.C. 461, 59 S.E. 145, 13 Am.Ann.Cas. 1133.

Word “ballot” implying secrecy of voting. State ex rel. Birchmore v. State Bd. of Canvassers (S.C. 1907) 78 S.C. 461, 59 S.E. 145, 13 Am.Ann.Cas. 1133.

Participation in election where secrecy of ballot is being violated does not estop voter from contesting election. Where a local option election was so held as to destroy the secrecy of the ballot, an elector, by voting without protest, did not estop himself from contesting the election. State ex rel. Birchmore v. State Bd. of Canvassers (S.C. 1907) 78 S.C. 461, 59 S.E. 145, 13 Am.Ann.Cas. 1133.

Directions as to form of ballot are mandatory. Ex parte Riggs (S.C. 1898) 52 S.C. 298, 29 S.E. 645.

2. Purpose

The purpose of statutorily mandated form for referendum ballot questions is to aid the voter in understanding the meaning of his vote, not the reason for it. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Municipal Corporations 108.10

3. Instructions

Voter instructions on ballot used for referendum on county sales and use tax were not neutral, but advocated passage of referendum, and thus, ballot’s nonconformance with statutorily mandated format was so substantial that it affected fundamental integrity of election, thereby nullifying it, where instructions characterized the tax as the “traffic congestion relief, safe roads, and clean water sales tax”; instead of explaining how a voter could vote for or against the tax, instructions attributed reasons to vote in favor of the measure. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Counties 55

4. Ballot questions

A referendum ballot question should not be submitted in such form as to amount to an argument for its acceptance or rejection. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Municipal Corporations 108.10

Neither State Election Commission nor county election commission has any unilateral authority to shorten or change the wording of a question to fit a particular ballot form; the commissions, subject to statutory guidance, control the form of the ballot only as it pertains to physical characteristics of the ballot such as space limitations and the arrangement of names and issues. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Counties 55

**SECTION 7‑13‑410.** Ballots where both state‑wide and local constitutional amendments are submitted.

 Whenever at any general election proposed amendments to the Constitution of both state‑wide and local natures are submitted to the qualified electors of the State, the State officer charged with the duty of preparing the ballots shall arrange and classify the proposed amendments on such ballots as follows:

 At the top of one ballot shall be printed the words “Statewide Constitutional Amendments.” Under this heading there shall be placed the various proposed amendments of a state‑wide nature. At the top of a separate ballot shall be printed the words “Local Constitutional Amendments.” Under this heading there shall be printed in alphabetical order the names of the various counties of the State affected by any proposed local amendments and under the name of each county the particular amendment affecting such county, or any particular subdivision thereof, or municipality situated therein, but when any proposed amendment relates to two or more counties such proposed amendment shall be listed under a joint heading combined of the names of such counties. The heading shall be printed in larger type than that used in printing the proposed amendment.

 Ballots for the state‑wide constitutional amendments shall be printed on white paper and ballots for the local constitutional amendments shall be printed on a paper other than white.

HISTORY: 1962 Code Section 23‑400.22; 1952 Code Section 23‑319; 1950 (46) 2059; 1965 (54) 175; 1966 (54) 2340.

LIBRARY REFERENCES

29 C.J.S., Elections Section 170.

Attorney General’s Opinions

Advisory referendum requires legislative authority. 1969‑70 Op Atty Gen, No. 2935, p 190.

**SECTION 7‑13‑420.** Oath of printer of ballots and assistants.

 The printer with whom the executive director, board of voter registration and elections or other authority, as the case may be, shall contract for the printing of official ballots shall, before the work is commenced, take an oath before the Executive Director of the State Election Commission or the chairman of the commissioners or other authority, as the case may be, who may administer such oath, to the following effect: “I, \_\_\_\_\_\_\_\_\_\_, do solemnly swear that I will print (here insert number) ballots according to the instructions of the \_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_; that I will not print or permit to be printed, directly or indirectly, more than the above number; that I will at once destroy all imperfect and perfect impressions other than those required to be delivered to the electoral board; that as soon as said number of ballots is printed I will distribute the type used for such work and that I will not communicate to anyone whomsoever, in any manner whatsoever, the size, style or contents of such ballots.”

 The above oath shall be reduced to writing and signed by the person taking it and also a similar affidavit shall be required of any employee or other person engaged upon the work or who shall have access to it. Any intentional violation of such oath shall constitute the crime of perjury. Any other violation of the provisions of this section shall be a misdemeanor and punished by a fine of one hundred dollars or imprisonment for thirty days in jail.

 Nothing herein contained shall be construed to prohibit the executive director, the commissioners or other authority from publishing or otherwise disclosing the contents, style and size of ballots required to be printed by them which they are respectively authorized and empowered to publish or otherwise disclose.

HISTORY: 1962 Code Section 23‑400.24; 1952 Code Section 23‑320; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑430.** Ballots provided where voting machines not used; substitute ballots; penalties for failure to provide; failsafe ballots.

 (A) There must be provided for each voting place where voting machines are not used as many ballots as are equal to one hundred ten percent of the registered qualified voters at the voting place. There must be provided for each voting place where voting machines are used a number of ballots not to exceed ten percent of the registered qualified voters at the voting place. The authority responsible for conducting an election must provide to each poll manager the appropriate number of ballots according to the provisions of this section.

 (B) When a sufficient number of official ballots are not available for all qualified electors present at the polling place to vote, the managers of election without undue delay shall provide ballots made as nearly as possible in the form of the official ballot to those electors for whom official ballots are unavailable, and for all purposes of the election laws of this State these ballots are the same as official ballots. A manager of election who fails to comply with the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars.

 (C) There must be provided for each voting place a number of failsafe ballots, or ballots containing only the races for federal, statewide, countywide, and municipalwide offices, not to exceed five percent of the registered qualified voters at the voting place. The authority responsible for conducting an election must provide to each poll manager the appropriate number of ballots according to the provisions of this section.

HISTORY: 1962 Code Section 23‑400.25; 1952 Code Section 23‑347; 1950 (46) 2059; 1966 (54) 2340; 1990 Act No. 331, Section 1, eff February 20, 1990; 2000 Act No; 392, Section 4, eff August 1, 2000.

Effect of Amendment

The 1990 amendment designated the existing text as subsection (A), and in (A), replaced “shall” with “must” and “such “ with “the”, and added the last sentence; and added subsection (B).

The 2000 amendment, in the second sentence of subsection (A), substituted “a number of” for “as many” and “not to exceed” for “as are equal” and added subsection (C) relating to failsafe ballots.

LIBRARY REFERENCES

29 C.J.S., Elections Section 155.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

**SECTION 7‑13‑440.** Voting machine ballots; arrangement of nominations.

 In every county, city or town providing voting machines, the board of voter registration and elections shall furnish to the managers of election a sufficient number of ballots printed on clear white paper, of such form and size as will fit the ballot frames of the machines, the arrangement of the names of the candidates on such ballots to be prescribed by the board of voter registration and elections. Party nominations shall be arranged on each voting machine either in columns or horizontal rows, as shall nominations by petition, and the captions of the various ballots on such machines shall be so placed as to indicate to the voter what push knob, key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice.

HISTORY: 1962 Code Section 23‑400.26; 1966 (54) 2340.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

LIBRARY REFERENCES

29 C.J.S., Elections Section 158.

Attorney General’s Opinions

Under 1962 Code Section 23‑400.26 [1976 Code Section 7‑13‑440], voting machines must be constructed to allow a voter to vote for all candidates of one party at any level of government. 1975‑76 Op Atty Gen, No 4464, p 326.

Only voting machines with master levers have been approved for use in South Carolina. 1967‑68 Op Atty Gen, No. 2498, p 175.

**SECTION 7‑13‑450.** Use of voting machines shall not prohibit use of separate ballots on certain questions.

 The use of voting machines in an election shall not prohibit the use of a separate ballot for constitutional amendments and other public measures.

HISTORY: 1962 Code Section 23‑400.27; 1966 (54) 2340.

LIBRARY REFERENCES

29 C.J.S., Elections Section 157.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

Attorney General’s Opinions

Separate paper ballots for constitutional amendments. It was the intent of the legislature that separate paper ballots should be used for constitutional amendments where it is impossible to place the amendments on the machine themselves due to space requirements. 1967‑68 Op Atty Gen, No. 2503, p 183.

Constitutional amendments cannot be placed on a voting machine by numbers. 1967‑68 Op Atty Gen, No. 2503, p 183.

**SECTION 7‑13‑460.** Use of paper ballots.

 (A) In special elections to fill vacancies in office, if the use of voting machines is not practicable or cost efficient, the county election officials may use paper ballots in these elections.

 (B) If paper ballots are used, the procedure for their use and the counting of these ballots must be in accordance with the provisions of law governing the use of paper ballots, mutatis mutandis.

HISTORY: 1996 Act No. 367, Section 1, eff May 29, 1996.

ARTICLE 5

Ballots for Primary Elections

**SECTION 7‑13‑610.** Ballot specifications; separate ballots for each party.

 (A) The State Election Commission and the respective county boards of voter registration and elections shall prepare separate ballots for each political party holding a primary. The ballots for each party must contain in print only the names of the candidates who have filed to run in that particular party primary and must have a stub at the top perforated so as to be easily detached. On the stub must be printed “Official state (or county) Ballot, (name of party) Primary”, the name of the county and the precinct, and the date of the primary. On the right side there must be a blank line under which must be printed “Initials of Issuing Officer”. Stubs on ballots for each precinct must be numbered consecutively, beginning with “No. 1”. The ballots must be furnished by the State Election Commission for all except members of the General Assembly, county officers, less than county officers, and circuit solicitors, for which the county board of voter registration and elections shall furnish the ballots. One ballot must contain the names of all persons in alphabetical order running for state and federal offices. The other ballot must contain, in alphabetical order, the names of all persons running for the General Assembly, county offices, less than county officers, and solicitors.

 (B) Ballots furnished by the State Election Commission under this section must have marked on them in plain type, both on the stub and on the ballot, the words “Official State Ballot”. Ballots furnished by the county board of voter registration and elections under this section must have marked on them in plain type, both on the stub and on the ballot, the words “Official County Ballot”.

 (C) The ballot must be printed on paper of a thickness so that the printing cannot be distinguished from the back and must be of a size and color as directed by the State Election Commission. If more than one ballot is to be used in a primary, each ballot must be printed on different colored paper. The ballot must contain a voting square opposite the name of each candidate, and the voter shall vote by putting a mark in the voting square opposite the name of the candidate of his choice. The State Election Commission may establish, under Chapter 23 of Title 1, such rules and regulations as are necessary for the proper administration of this section.

HISTORY: 1962 Code Section 23‑400.31; 1952 Code Section 23‑377; 1950 (46) 2059; 1966 (54) 2340; 1981 Act No. 1 Section 1, eff January 14, 1981; 1992 Act No. 253, Section 6, eff February 19, 1992; 1996 Act No. 242, Section 2, eff March 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1981 amendment added the fourth paragraph.

The 1992 amendment rewrote this section.

The 1996 amendment revised this section to designate subsections (A) through (C) and to provide for the alphabetical listing of names on each ballot.

CROSS REFERENCES

Constitutional provision that elections are to be by secret ballot, see SC Const, Art 2, Section 1.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 118(1) et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 12, Duties.

United States Supreme Court Annotations

Freedom of association, political parties, blanket primary system, candidate designation on ballot of political party preference, see Washington State Grange v. Washington State Republican Party, 2008, 128 S.Ct. 1184, 552 U.S. 442, 170 L.Ed.2d 151, on remand 545 F.3d 1125.

**SECTION 7‑13‑611.** Arrangement of official county and state primary ballots.

 The arrangement of each “Official County Ballot” for each primary, containing the names of candidates for office, must conform as nearly as practicable to the following plan and contain specified instructions and no others:

|  |  |
| --- | --- |
|  |  |
| OFFICIAL COUNTY BALLOT, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRIMARY |
| (NAME OF PARTY) |
|   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, SOUTH CAROLINA |
|   |
| NO: \_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|   | Initials of Issuing Officer |
|   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 19\_\_\_\_\_\_ |
| (DATE OF ELECTION) |
|   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (NAME OF PRECINCT) |
|   |
| OFFICIAL COUNTY BALLOT, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRIMARY |
| (NAME OF PARTY) |
|   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, SOUTH CAROLINA |
|   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 19\_\_\_\_\_\_ |
| (DATE OF ELECTION) |
|   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| (NAME OF PRECINCT) |

|  |  |
| --- | --- |
|  |  |
| INSTRUCTIONS ‑ |   |
|   | Make a cross (X) in the voting square [] opposite the name of each candidate on the ballot for whom you wish to vote. Before leaving the booth, fold the ballot so that the initials of the manager may be seen on the outside. |
|   |
| You may vote for one, less than one, but not more than one candidate. |
|   |
|   |
|   |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| SHERIFF |   | ONE SEAT TO FILL |   |
| (Example) |   |   |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   |
| You may vote for three, less than three, but not more than three candidates. |
|   |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| COUNTY COUNCIL |   | THREE SEATS TO FILL |   |
| (Example) |   |   |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |
|   | [] | (NAME OF CANDIDATE) |   |

 Each “Official State Ballot” similarly must conform to the plan set forth in this section.

 The State Election Commission is hereby empowered to promulgate such rules and regulations under Chapter 23 of Title 1 as are necessary for the arrangement of the official county ballot.

HISTORY: 1992 Act No. 253, Section 7, eff February 19, 1992.

LIBRARY REFERENCES

29 C.J.S., Elections Section 156.

NOTES OF DECISIONS

In general 1

1. In general

The use of ballots that are not designed to be folded violates the constitutional and statutory right to a secret ballot. George v. Municipal Election Com’n of City of Charleston (S.C. 1999) 335 S.C. 182, 516 S.E.2d 206. Election Law 318; Election Law 363(5)

**SECTION 7‑13‑620.** Repealed by 2000 Act No. 392, Section 11, eff August 1, 2000.

Editor’s Note

Former Section 7‑13‑620 was entitled “Ballots provided where voting machines not used; substitute ballots; penalties for failure to provide” and was derived from; 1962 Code Section 23‑400.32; 1952 Code Section 23‑347; 1950 (46) 2059; 1966 (54) 2340; 1990 Act No. 331, Section 2, eff February 20, 1990.

ARTICLE 7

Voting Provisions Applicable to All Elections

**SECTION 7‑13‑710.** Proof of right to vote; signing poll list; comparison of signatures; provisional ballot; purpose of requirement.

 (A) When a person presents himself to vote, he shall produce a valid and current:

 (1) South Carolina driver’s license; or

 (2) other form of identification containing a photograph issued by the Department of Motor Vehicles; or

 (3) passport; or

 (4) military identification containing a photograph issued by the federal government; or

 (5) South Carolina voter registration card containing a photograph of the voter pursuant to Section 7‑5‑675.

 (B) After presentation of the required identification described in subsection (A), the elector’s name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of voter registration and elections. One of the managers also shall compare the photograph contained on the required identification with the person presenting himself to vote. The manager shall verify that the photograph is that of the person seeking to vote. The managers shall keep a poll list which must contain one column headed “Names of Voters”. Before a ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page, the voter’s oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter’s driver’s license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.

 (C)(1) If the elector cannot produce the identification as required in subsection (A), he may cast a provisional ballot that is counted only if the elector brings a valid and current photograph identification to the county board of voter registration and elections before certification of the election by the county board of canvassers.

 (2) If the manager disputes that the photograph contained on the required identification is the person presenting himself to vote, the elector may cast a provisional ballot. A determination of that provisional ballot must be made in accordance with Section 7‑13‑830.

 (D)(1)(a) If an elector does not produce a valid and current photograph identification due to a religious objection to being photographed, he may complete an affidavit under penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) has a religious objection to being photographed. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of voter registration and elections before certification of the election by the county board of canvassers.

 (b) If an elector does not produce a valid and current photograph identification because the elector suffers from a reasonable impediment that prevents the elector from obtaining photograph identification, he may complete an affidavit under the penalty of perjury at the polling place and affirm that the elector: (i) is the same individual who personally appeared at the polling place; (ii) cast the provisional ballot on election day; and (iii) the elector suffers from a reasonable impediment that prevents him from obtaining photograph identification. The elector also shall list the impediment, unless otherwise prohibited by state or federal law. Upon completion of the affidavit, the elector may cast a provisional ballot. The affidavit must be submitted with the provisional ballot envelope and be filed with the county board of voter registration and elections before certification of the election by the county board of canvassers.

 (2) If the county board of voter registration and elections determines that the voter was challenged only for the inability to provide proof of identification and the required affidavit is submitted, the county board of voter registration and elections shall find that the provisional ballot is valid unless the board has grounds to believe the affidavit is false.

 (3) If the county board of voter registration and elections determines that the voter has been challenged for a cause other than the inability to provide proof of identification as required by subsection (A), the county board of voter registration and elections shall:

 (a) note on the envelope containing the provisional ballot that the voter complied with the proof of identification requirement; and

 (b) proceed to determine the validity of the remaining challenges before ruling on the validity of the provisional ballot.

 (E) The purpose of the identification required pursuant to subsection (A) is to confirm the person presenting himself to vote is the elector on the poll list. Any address listed on the identification is not determinative of an elector’s domicile for the purpose of voting. An elector’s domicile for the purpose of voting is determined pursuant to the provisions of Section 7‑1‑25.

HISTORY: 1962 Code Section 23‑400.51; 1952 Code Sections 23‑322, 23‑380; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1984 Act No. 510, Section 17, eff June 28, 1984; 1988 Act No. 507, Section 2, eff May 9, 1988; 1993 Act No 181 Section 65, eff July 1, 1993; 1996 Act No. 459, Section 5, eff June 5, 1996; 2011 Act No. 27, Section 5, eff upon contingency.

Code Commissioner’s Note

Pursuant to the direction to the Code Commissioner in 2003 Act No. 51, Section 18, “Department of Public Safety” was changed to “Department of Motor Vehicles” in the first sentence.

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

2011 Act No. 27, Section 5, declared legally unenforceable pursuant to Section 5 of the Voting Rights Act of 1965 by the U.S. Department of Justice, see letter to S.C. Assistant Deputy Attorney General from the Civil Rights Division of the U.S. Department of Justice, dated December 23, 2011. 2011 Act No. 27, Section 5, amends Section 7‑13‑710, which read:

“When any person presents himself to vote, he shall produce his valid South Carolina driver’s license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by Sections 7‑5‑125 and 7‑5‑180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed ‘Names of Voters’. Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter’s oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter’s driver’s license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.”

2011 Act No. 27, Sections 7 and 8, provide as follows:

“SECTION 7. The State Elections Commission must establish an aggressive voter education program concerning the provisions contained in this legislation. The State Elections Commission must educate the public as follows:

“(1) Post information concerning changes contained in this legislation in a conspicuous location at each county board of registration and elections, each satellite office, the State Elections Commission office, and their respective websites.

“(2) Train poll managers and poll workers at their mandatory training sessions to answer questions by electors concerning the changes in this legislation.

“(3) Require documentation describing the changes in this legislation to be disseminated by poll managers and poll workers at every election held following preclearance by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.

“(4) Coordinate with each county board of registration and elections so that at least two seminars are conducted in each county prior to December 15, 2011.

“(5) Coordinate with local and service organizations to provide for additional informational seminars at a local or statewide level.

“(6) Place an advertisement describing the changes in this legislation in South Carolina newspapers of general circulation by no later than December 15, 2011.

“(7) Coordinate with local media outlets to disseminate information concerning the changes in this legislation.

“(8) Notify each registered elector who does not have a South Carolina issued driver’s license or identification card a notice of the provisions of this act by no later than December 1, 2011. This notice must include the requirements to vote absentee, early, or on election day and a description of voting by provisional ballot. It also must state the availability of a free South Carolina identification card pursuant to Section 56‑1‑3350.

“In addition to the items above, the State Elections Commission may implement additional educational programs in its discretion.

“SECTION 8. The State Election Commission is directed to create a list containing all registered voters of South Carolina who are otherwise qualified to vote but do not have a South Carolina driver’s license or other form of identification containing a photograph issued by the Department of Motor Vehicles as of December 1, 2011. The list must be made available to any registered voter upon request. The Department of Motor Vehicles must provide the list of persons with a South Carolina driver’s license or other form of identification containing a photograph issued by the Department of Motor Vehicles at no cost to the commission. The commission may charge a reasonable fee for the provision of the list in order to recover associated costs of producing the list.”

The United States District Court for the District of Columbia precleared sections 4, 5, 7, and 8 of 2011 Act No. 27 for future elections in South Carolina beginning with any elections in 2013, see South Carolina v. U.S., ‑‑ F.Supp.2d ‑‑, 2012 WL 4814094 (D.D.C.,2012).

Effect of Amendment

The 1984 amendment substantially reworded this section.

The 1988 amendment added language so as to revise the voter identification requirements by providing for proof by written registration notification.

The 1993 amendment substituted “Department of Revenue” for “Department of Highways and Public Transportation (SCDHPT)”.

The 1996 amendment in the first sentence, substituted “Department of Public Safety” for “South Carolina Department of Revenue”.

The 2011 amendment rewrote the section.

CROSS REFERENCES

Applicability of this section to the furnishing of identification by a registered elector whose name does not appear or incorrectly appears on the official list of voters of his precinct, see Section 7‑5‑440.

Applicability of this section to the identification required as a prerequisite to the right of an elector to vote, see Section 7‑5‑620.

Applicability of this section to the voting rights of a person whose name does not appear on the registration book, see Section 7‑13‑820.

Presentation of the identification required by this section, on behalf of handicapped or elderly voters who cannot enter the polling place or stand in line to vote, see Section 7‑13‑771.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 36, Issuance of Duplicate Certificate.

S.C. Jur. Elections Section 57, Proving Right to Vote.

S.C. Jur. Elections Section 58, Receiving Ballot.

LAW REVIEW AND JOURNAL COMMENTARIES

“Things have changed in the South”: How preclearance of South Carolina’s Voter Photo ID Law demonstrates that Section 5 of the Voting Rights Act is no longer a constitutional remedy. John G. Tamasitis, 64 S.C. L. Rev. 959 (Summer 2013).

Attorney General’s Opinions

A court would likely conclude that a licensed concealed weapons permit holder may use his or her permit as identification to vote pursuant to South Carolina’s Voter ID law. S.C. Op.Atty.Gen. (March 8, 2016) 2016 WL 963705.

Although the Voter ID Act does not define the phrase “military identification containing a photograph issued by the federal government,” it is our opinion that a court would likely conclude that a current and valid Veterans Identification Card (VIC) is included within this phrase because eligibility for the VIC card is based upon prior active service in the active military, naval or air service and who was discharged and released from service therefrom under conditions other than dishonorable. S.C. Op.Atty.Gen. (January 31, 2013) 2013 WL 565005.

Discussion of the implementation of 2011 Act No. 27 upon preclearance, for the 2012 general election. S.C. Op.Atty.Gen. (June 29, 2012) 2012 WL 2867807.

The short time frame between any preclearance in the Voter ID legislation and the date of any election immediately thereafter would constitute a reasonable impediment to the voter. S.C. Op.Atty.Gen. (August 16, 2011) 2011 WL 3918168.

A court would likely conclude that the South Carolina “Photo ID” legislation is facially constitutional, however, the “grandfather” provision of the Voter ID Bill would raise serious constitutional concerns under the Equal Protection Clause of the Fourteenth Amendment (U.S. Const. Amend. XIV). S.C. Op.Atty.Gen. (March 3, 2011) 2011 WL 1444704.

Registration certificate lacking attestation as to elector’s signature. A challenge by a poll watcher of a vote is not proper, necessarily, where a voter’s registration certificate merely lacks the attestation of a board member, deputy member or clerk as to the signature of the elector appearing thereon. 1970‑71 Op Atty Gen, No. 3193, p 167.

NOTES OF DECISIONS

In general 1

1. In general

The purpose of Sections 7‑13‑710 et seq. is to assure the orderly and fair election of South Carolina public officials. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131.

**SECTION 7‑13‑720.** Oath of voter.

 In the event the oath is not printed at the top of the poll list as provided for in Section 7‑13‑710, the managers of election shall administer to each person offering to vote an oath that he is qualified to vote at this election, according to the laws and Constitution of this State, and that he has not voted during this election.

HISTORY: 1962 Code Section 23‑400.52; 1952 Code Section 23‑346; 1950 (46) 2059; 1966 (54) 2340.

CROSS REFERENCES

Punishment for false swearing at elections, see Section 7‑25‑150.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 58, Receiving Ballot.

NOTES OF DECISIONS

In general 1

1. In general

The provisions as to the administering of the oath is not mandatory or imperative, but is directory only. State v State Board, 86 SC 451, 68 SE 676 (1910). Smith v Saye, 130 SC 20, 125 SE 269 (1924).

And violation of such provision does not vitiate election. It is well settled that the violation of such provisions of the section as merely regulate the conduct of elections is not, in the absence of fraud, vitiative, unless it is made to appear that the result was thereby affected. State v State Board, 86 SC 451, 68 SE 676 (1910). Smith v Saye, 130 SC 20, 125 SE 269 (1924).

In the reception of votes the office of manager under this section is purely a ministerial one. State v. Bruce (S.C. 1812) 6 Am.Dec. 576.

**SECTION 7‑13‑730.** Delivery and marking of ballot; deposit into ballot box.

 If the managers are reasonably sure that the person is entitled to vote, they shall then deliver a ballot to such person, and thereupon the voter shall immediately go to the booth and mark his ballot preparatory to depositing it in the ballot box. After the voter has marked his ballot, he shall fold it so as to leave the stub remaining attached thereto visible in such position that it can be detached without unfolding. When the ballot is returned, one of the managers shall detach and retain the stub, and the voter shall then deposit his folded ballot in the box.

HISTORY: 1962 Code Section 23‑400.53; 1952 Code Sections 23‑323, 23‑381; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 58, Receiving Ballot.

NOTES OF DECISIONS

In general 1

1. In general

The use of ballots that are not designed to be folded violates the constitutional and statutory right to a secret ballot. George v. Municipal Election Com’n of City of Charleston (S.C. 1999) 335 S.C. 182, 516 S.E.2d 206. Election Law 318; Election Law 363(5)

**SECTION 7‑13‑740.** Number and construction of booths; only one voter in booth at a time; speaking to voter prohibited.

 There must be provided at each polling precinct at least one booth. At least one booth must be provided for each two hundred and fifty registered electors or a major fraction thereof of the precinct. The booths must be made of wood, sheet metal, or other suitable substance; must not be less than thirty‑two inches wide, thirty‑two inches deep, and six feet six inches high; must have a curtain hanging from the top in front to within three feet of the floor; and must have a suitable shelf on which the voter can prepare his ballot. In primary, general, and special elections, the booths must be provided by the board of voter registration and elections. Only one voter shall be allowed to enter a booth at a time, and no one except as provided herein is allowed to speak to a voter while in the booth preparing his ballot.

HISTORY: 1962 Code Section 23‑400.54; 1952 Code Section 23‑348; 1950 (46) 2059; 1966 (54) 2340; 1996 Act No. 434, Section 9, eff June 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1996 amendment substituted “must” for “shall” throughout this section, deleted “any” preceding “other suitable substance”, substituted “must have a curtain” for “shall be provided with a curtain”, inserted “primary,” following “prepare his ballot. In”, substituted “board. Only one voter” for “board; in primaries by the county committee. But one voter”, substituted “a” for “any” preceding “booth at a time”, substituted “is” for “shall be” preceding “allowed to speak”, and made other nonsubstantive changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 12, Duties.

S.C. Jur. Elections Section 52, Setting Up Polling Area.

Attorney General’s Opinions

When voter is permitted to have another person in booth. A voter can have another person in the voting booth with him for purposes of assistance only in the event that he is either unable to write and thus did not have to sign the poll list because his registration certificate was issued upon proof of property ownership as required by Code 1962 Sections 23‑322 and 23‑380 (see now Code 1962 Section 23‑400.51) or that he is physically unable to or physically incapacitated from preparing his ballot or voting. 1965‑66 Op Atty Gen, No. 2005, p 66.

A voter’s wife is only permitted inside the voting booth with the voter in the event the voter is either illiterate or physically handicapped, and the voter’s wife must have been designated by the voter as the bystander he wishes to enter the voting booth with him. 1965‑66 Op Atty Gen, No. 2005, p 66, decided prior to 1970 amendment to Code 1962 Section 23‑400.56.

NOTES OF DECISIONS

In general 1

1. In general

Statute requiring election officials to provide voting booths was mandatory, and municipal election committee’s failure to provide any such booths required nullification of results of special municipal election, even though there was no evidence of voter intimidation or fraud. George v. Municipal Election Com’n of City of Charleston (S.C. 1999) 335 S.C. 182, 516 S.E.2d 206. Election Law 462

**SECTION 7‑13‑750.** Repealed by 1984 Act No. 315, Section 1, eff April 2, 1984.

Editor’s Note

Former Section 7‑13‑750 was entitled “Spouses may vote together” and was derived from 1975 (59) 815.

**SECTION 7‑13‑760.** Time when voter must leave booth and voting place; voter must be alone in booth and must not talk while voting.

 No voter, while receiving, preparing and casting his ballot, shall occupy a booth or compartment for a longer time than five minutes. No voter shall be allowed to occupy a booth or compartment already occupied by another, nor to speak or converse with anyone, except as herein provided, while in the booth. After having voted, or declined or failed to vote within five minutes, the voter shall immediately withdraw from the voting place and shall not enter the polling place again during the election.

HISTORY: 1962 Code Section 23‑400.55; 1952 Code Section 23‑349; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 56, Time.

**SECTION 7‑13‑770.** Unauthorized persons within guard rails; voters requiring assistance; minor children of qualified elector accompanying parent into booth.

 (A) A person other than a voter preparing his ballot is not allowed within the guard rail, except as provided in this section. A voter who requires assistance to vote by reason of blindness, disability, or inability to read or write shall make the fact known to the managers. The chairman of the managers shall appoint one of the managers and a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union to assist the voter in preparing his ballot. After the voter’s ballot has been prepared, the person chosen by the voter to assist him immediately shall leave the vicinity of the guard rail. Instead of the above assistance, a person may have a member of his family or, in the case of a blind voter, a person of his choosing render him assistance in voting without the presence of a manager. The term “family” means spouse, father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, aunt, uncle, niece, or nephew.

 (B) Minor children of a qualified elector may accompany the qualified elector in the voting booth while he is casting his ballot. The qualified elector shall attest that the persons accompanying him are the minor children of the elector.

HISTORY: 1962 Code Section 23‑400.56; 1952 Code Section 23‑350; 1950 (46) 2059; 1966 (54) 2340; 1970 (56) 1913; 1984 Act No. 445, eff June 15, 1984; 2008 Act No; 205, Section 1, eff May 14, 2008.

Editor’s Note

NOTE: The provisions of Section 7‑13‑770 have not been pre‑cleared by the U.S. Department of Justice and cannot be put into effect. The 1982 Amendment to the Voting Rights Act would apply and must be used in lieu of this section.

The Voting Rights Act of 1965 was further amended in 1982, effective January 1, 1984, to provide that:

“Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice other than the voter’s employer or agent of that employer or officer or agent of that voter’s union.”

Effect of Amendment

The 1984 amendment substantially reworded this section.

The 2008 amendment designated subsection (A), making nonsubstantive language changes, and added subsection (B) relating to children of qualified electors accompanying their parent into the booth.

CROSS REFERENCES

Exclusion of persons from vehicles in which handicapped or elderly persons may vote if they cannot enter the polling place, see Section 7‑13‑771.

LIBRARY REFERENCES

29 C.J.S., Elections Section 208.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 59, Assistance to Voters‑ Generally.

United States Supreme Court Annotations

Elections, voting rights preclearance requirements, utility districts, bail out provisions, see Northwest Austin Mun. Utility Dist. No. One v. Holder, U.S.Dist.Col.2009, 129 S.Ct. 2504, 557 U.S. 193, 174 L.Ed.2d 140.

Attorney General’s Opinions

Both husband and wife must be registered voters in order to enter a voting booth together. 1975‑76 Op Atty Gen, No. 4299, p 119.

A literate person cannot receive assistance merely because he prefers to have someone in the booth with him to assist him in marking his ballot. 1965‑66 Op Atty Gen, No. 2041, p 119.

Unless he is physically handicapped. A person who is able to read and write is not authorized to receive assistance unless physically handicapped. 1965‑66 Op Atty Gen, No. 2041, p 119.

Voter who signs poll list is presumed literate. If a voter is able to sign his name to the poll list, he is presumptively literate and should not be permitted to receive assistance unless the managers are reasonably certain that he is, in fact, unable to read and write. 1965‑66 Op Atty Gen, No. 2041, p 119.

Appointment of bystander. This section [Code 1962 Section 23‑400.56] contemplates that a bystander appointed by the manager upon designation of a voter should not himself be physically incapacitated or illiterate. 1965‑66 Op Atty Gen, No. 2011, p 75.

If an appointed bystander is either physically incapacitated or illiterate, the voter should be asked to designate another. 1965‑66 Op Atty Gen, No. 2011, p 75.

**SECTION 7‑13‑771.** Voting by handicapped and elderly electors who cannot enter the polling place or cannot stand in line to vote.

 (A) Any elector who, because of physical handicap or age, cannot enter the polling place in the precinct in which he is registered to vote, or is unable to stand in line to vote, may vote outside that polling place in the closest available parking area utilizing the vehicle in which he has been driven, or has driven to the polls.

 (B) When the managers are informed that a handicapped or elderly voter cannot enter the polling place or cannot stand in line to vote, the voter’s identification required by Section 7‑13‑710 must be presented to the managers who must verify that the voter is eligible to vote. Upon verification of the voter’s eligibility, two managers shall take the poll list and the voter’s ballot to the voter in his vehicle outside the polling place. The managers shall notify any poll watchers present who, at their discretion, may accompany the managers as observers. Where the polling place uses machines for the purposes of voting, the poll managers must use the ballots provided under Sections 7‑13‑1470 or 7‑13‑1870 for those voters who cannot enter the polling place.

 (C) No person other than the voter is permitted in the vehicle in which the voter is casting his ballot unless the voter is entitled to assistance as provided in Section 7‑13‑770.

 (D) After the voter has voted his ballot, he must fold it so that the secrecy of the ballot is preserved and return it to the managers waiting outside the vehicle. The managers shall carry the ballot to the ballot box, taking care not to violate the secrecy of the ballot, and after detaching the stub, deposit the ballot in the ballot box.

HISTORY: 1986 Act No. 407, Section 1, eff May 12, 1986.

LIBRARY REFERENCES

29 C.J.S., Elections Section 208.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 60, Assistance to Voters‑ Curbside/Handicapped Voting.

S.C. Jur. Elections Section 64, Poll Watchers.

**SECTION 7‑13‑780.** Designation of voters who may receive assistance.

 Only those persons who are unable to read or write or who are physically unable or incapacitated from preparing a ballot or voting shall be entitled to receive assistance of any kind in voting.

HISTORY: 1962 Code Section 23‑400.57; 1952 Code Section 23‑351; 1950 (46) 2059; 1966 (54) 2340.

LIBRARY REFERENCES

29 C.J.S., Elections Section 208.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 59, Assistance to Voters‑ Generally.

**SECTION 7‑13‑790.** Substitute for marred or defaced ballot.

 If a voter shall mar or deface his ballot, he may obtain one additional ballot upon returning to the managers in charge of the ballots the ballot so marred or defaced with the stub attached. The manager in charge of the poll list shall change the number of the ballot on the poll list and place the marred or defaced ballot in a file. No voter shall be given a second ballot until he has returned the first one with the stub attached.

HISTORY: 1962 Code Section 23‑400.58; 1952 Code Section 23‑352; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 62, Spoiled Ballots.

**SECTION 7‑13‑800.** Write‑ins shall be in handwriting of voter or authorized manager.

 In casting a write‑in ballot, the voter shall cast it in his own handwriting or in the handwriting of a duly authorized manager who is aiding the voter in casting his ballot when assistance is authorized by this Title.

 Nothing contained in this section shall be construed to prevent the use of electronic methods of casting write‑in ballots or the use of voting machines which do not employ paper and handwriting methods or technology for casting write‑in ballots.

HISTORY: 1962 Code Section 23‑400.59; 1952 Code Section 23‑324; 1950 (46) 2059; 1966 (54) 2340; 1995 Act No. 145, Part II, Section 59B, eff June 29, 1995.

Effect of Amendment

The 1995 amendment added the second paragraph.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 61, Assistance to Voters‑ Write‑In Vote and Write‑In Absentee Ballot.

Attorney General’s Opinions

Write‑in vote of voter entitled to assistance. A write‑in vote must be cast in the handwriting of the voter unless he is entitled to receive assistance under the provisions of the election law in which case such vote will be case in the handwriting of the manager. 1965‑66 Op Atty Gen, No. 2172, p 306.

The use of pasters or stickers is not permitted. 1965‑66 Op Atty Gen, No. 2172, p 306.

**SECTION 7‑13‑810.** Prevention of illegal voting or taking too much time; challenging voters.

 The managers of election shall prevent any person from voting when they have good reason to believe the person has already voted. They shall refuse to allow a person to vote who is not a registered elector or who has become disqualified for any cause to vote in the voting precinct. They may also prevent any voter from consuming more than five minutes in voting, but no manager may examine, read, or handle the ballot being voted or about to be voted by a voter or interfere in any way with the voting of a voter otherwise than provided in this section. It is the duty of the managers of election to, and any elector or qualified watcher may, challenge the vote of a person who may be known or suspected not to be a qualified voter. However, the challenges by persons other than a manager must be addressed to the manager and not directly to the voter. The manager shall then present the challenge to the voter and act in accordance with the provisions provided for in this section. All challenges must be made before the time a voter deposits a paper ballot in a ballot box or casts his vote in a voting machine, and no challenge may be considered after that time. However, challenges may be made at any time before the opening of return‑addressed envelopes and the removal of “Ballot Herein” envelopes from them as to absentee voters. Nothing contained from them affects the right of an elector or qualified watcher to challenge the vote of a person which is fraudulent or when the challenge is based on evidence discovered after the vote is cast. A candidate may protest an election in which he is a candidate pursuant to Section 7‑17‑30 when the protest is based in whole or in part on evidence discovered after the election. This evidence may include, but is not limited to, after‑discovered evidence of voters who have voted in a precinct or for a district office other than the one in which they are entitled by law to vote.

HISTORY: 1962 Code Section 23‑400.60; 1952 Code Section 23‑353; 1950 (46) 2059; 1966 (54) 2340; 1974 (58) 2641; 1990 Act No. 357, Section 4, eff March 19, 1990; 1996 Act No. 466, Section 9, eff August 21, 1996.

Effect of Amendment

The 1990 amendment provides that challenges may be made at any time before the opening of the envelopes containing the absentee ballots, instead of when the ballots are counted.

The 1996 amendment revised this section.

LIBRARY REFERENCES

29 C.J.S., Elections Section 209.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 56, Time.

S.C. Jur. Elections Section 58, Receiving Ballot.

S.C. Jur. Elections Section 64, Poll Watchers.

S.C. Jur. Elections Section 91, Legal Standard to Overturn Election.

Attorney General’s Opinions

Registration certificate lacking attestation as to elector’s signature. A challenge by a poll watcher of a vote is not proper, necessarily, where a voter’s registration certificate merely lacks the attestation of a board member, deputy member or clerk as to the signature of the elector appearing thereon. 1970‑71 Op Atty Gen, No. 3193, p 167.

NOTES OF DECISIONS

In general 1

1. In general

Candidate’s failure to discover, prior to election, that certain voters no longer lived in the precinct at which they voted at time of election, did not preclude her contest of election for city council, although candidate could have discovered the evidence on which she based her challenge before the election; evidence of the two voters who cast their ballots in a precinct where they no longer resided qualified as after‑discovered evidence allowed by statute. Gecy v. Bagwell (S.C. 2007) 372 S.C. 237, 642 S.E.2d 569. Election Law 552(2)

Actual residence of two voters who voted in city election was outside city limits, and thus voters were ineligible to vote in election; voters owned two contiguous lots, one of which was in city and one of which was outside city, but dwelling was located on lot which was outside city and which comprised about 80% of the total property. Dukes v. Redmond (S.C. 2004) 357 S.C. 454, 593 S.E.2d 606. Election Law 76

Losing mayoral candidate’s evidence that voters included on the voter registration list were not in fact city residents was after‑discovered evidence, and thus candidate’s protest of municipal election based on that evidence was not procedurally barred. Dukes v. Redmond (S.C. 2004) 357 S.C. 454, 593 S.E.2d 606. Election Law 552(2)

A poll manager is not required to issue a challenge ballot to a voter who was denied the right to vote unless the voter insists; requiring the voter to insist on a challenge ballot at the poll preserves the record and prevents after‑the‑fact challenges to otherwise proper elections. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131. Election Law 528

In an action challenging election results, the plaintiff was not allowed to base his challenge on the denial to certain voters of the opportunity to vote where neither the voters, watchers, electors, nor managers insisted that the voters be given a challenge ballot. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131.

A vote may be challenged by a watcher, elector, or manager. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131.

Insufficient evidence existed to overturn the election of a county probate judge where witnesses testified that votes were sold and people who did not require assistance were given assistance, but the witnesses (1) could not provide specific factual information to support their claims, (2) did not object to the allegedly improper votes as they were cast, even though it was within their authority to do so, and (3) no documentation of the allegations was obtained or preserved for appellate review; challenges to votes must be made before the voter is handed the ballot, or be based on evidence discovered after the vote is cast. Fielding v. South Carolina Election Com’n (S.C. 1991) 305 S.C. 313, 408 S.E.2d 232.

A candidate’s protest,which was based on discrepancies between the district where a voter actually resided and the voter’s district designation on the voter registration list, was untimely brought after the ballots were cast and counted where no challenge was raised at the time the ballots were cast; such a discrepancy could have been discovered prior to the election and a challenge made at the time the voter was given the ballot. Hill v. South Carolina Election Com’n (S.C. 1991) 304 S.C. 150, 403 S.E.2d 309.

The right to vote is a substantial right protected by law, and a voter whose right has been challenged should be allowed to hear the evidence against his right, in order that he may have the opportunity to adduce evidence in rebuttal, or in support of his right. Hyde v. Logan (S.C. 1919) 113 S.C. 64, 101 S.E. 41. Election Law 525

**SECTION 7‑13‑820.** Voting by person whose name is not on registration book.

 When any person presents himself with a valid South Carolina driver’s license or other form of identification required by Section 7‑13‑710, if he is not licensed to drive, at the polling precinct and his name does not appear on the registration book a manager must call the county registration office from any phone available at or away from the polling precinct. The manager shall give only the name of the elector as it appears on the driver’s license or other form of identification. The member of the board of voter registration and elections taking the call must check the records of the board and if the name of the person is found and he is eligible to vote in the precinct the date of birth of the person must be read to the manager who must then ask the person for such date. Upon answering correctly, the person may vote. When a manager is to make a call for such purpose, he must notify the poll watchers who may accompany the manager and have the information repeated to each of them. The manager must fill in the information on the driver’s license or other form of identification on a form provided for that purpose before permitting such person to vote. In the event such call is a toll call it may be made collect and the registration office must accept the call.

 If the name cannot be verified by the board of voter registration and elections, or if a phone is not available, the poll manager or his designee may permit the person to vote after following the procedures set forth in Section 7‑13‑830, and the vote must be processed as a provisional vote. The poll manager must be listed as the challenger.

 The provisions of this section are in addition to the procedure provided in Section 7‑5‑440.

HISTORY: 1962 Code Section 23‑400.60:1; 1974 (58) 2641; 1978 Act No. 521, eff May 30, 1978; 1984 Act No. 510, Section 18, eff June 28, 1984; 1996 Act No. 434, Section 10, eff June 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1978 amendment substantially rewrote this section.

The 1984 amendment substantially reworded this section.

The 1996 amendment in the second paragraph substituted “the” for “such” preceding “person to vote”, substituted “provisional” for “challenged”, and made nonsubstantive changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 57, Proving Right to Vote.

S.C. Jur. Elections Section 63, Challenged Ballots.

S.C. Jur. Elections Section 64, Poll Watchers.

**SECTION 7‑13‑830.** Procedure when voter challenged.

 When any person is so challenged, the manager must explain to him the qualifications of an elector and may examine his as to the same. If the person insists that he is qualified and the challenge is not withdrawn, his provisional vote must be received and placed in an envelope on which must be written the name of the voter and that of the challenger. The provisional votes must be kept separate and apart and not counted but turned over to the board of voter registration and elections or other authority having supervision of the election. At the meeting specified in either Section 7‑17‑10 or 7‑17‑510, whichever is applicable, this authority must hear all objections to these votes, and when no person appears or offers evidence before the meeting to sustain an objection made at the polls, the ballot is no longer a provisional ballot. When the challenger appears or produces witnesses or evidence in support of the challenge, the authority in charge must proceed to hear and determine the question. Its decision is final. Each provisional ballot which is no longer challenged and each ballot whose challenge was decided in favor of the voter must be removed from the envelope, mingled, and counted and the totals added to the previously counted regular ballot total of all precincts without attribution to a particular precinct. If the voting at the voting place is being done upon a voting machine, the managers must provide a paper ballot which must be placed in an envelope and treated as provided in this section.

 Where, pursuant to Section 7‑13‑820, a person’s name could not be verified by the board of voter registration and elections or where a telephone was not available and the person was allowed to vote a provisional ballot, the board of voter registration and elections, before the meeting, must certify to the authority in charge whether or not the voter is a qualified elector of the precinct in which he voted his provisional ballot. If the board certifies the person challenged is not a qualified elector of the precinct, this certification is considered an administrative challenge and is clear and convincing evidence for the meeting authority to disallow the ballot. Nothing in this section prohibits the county board of voter registration and elections from continuing any challenge administratively as long as it has evidence to sustain the challenge.

HISTORY: 1962 Code Section 23‑400.61; 1952 Code Section 23‑383; 1950 (46) 2059; 1966 (54) 2340; 1973 (58) 1861; 1987 Act No. 121, Section 1, eff June 2, 1987; 1987 Act No. 126, Section 1, eff June 8, 1987; 1988 Act No. 472, eff May 2, 1988; 1992 Act No. 253, Section 8, eff February 19, 1992; 1996 Act No. 434, Section 11, eff June 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

Section 7‑13‑830 was amended twice during 1987. Act No. 121, Section 1, amended this section, and subsequently Act No. 126, Section 1, amended this section without referring to the prior Act. The version appearing in Act No. 126, Section 1, is printed above as the latest expression of the General Assembly’s intent.

Effect of Amendment

The 1987 amendment by Act 126 established the procedures to follow when challenging a voter where evidence is and is not offered to sustain an objection, procedures to follow when a person whose name is not on the registration book is allowed to vote a challenged ballot, and procedures for administrative challenge of an unqualified elector.

The 1988 amendment added in the first paragraph a provision providing that the total number of ballots no longer challenged or whose challenge was not sustained be added to the regular ballot total without attribution to a particular precinct, and made grammatical changes.

The 1992 amendment in the third sentence replaced “the county committee” with “other authority”, and, in the fifth sentence, replaced “committee in charge” with “authority in charge”.

The 1996 amendment substituted “must” for “shall” and “provisional” for “challenged” throughout this section; and in the first paragraph inserted “provisional” in the second sentence preceding “vote must be received and placed” and in the seventh sentence preceding “ballot which is no longer challenged”.

CROSS REFERENCES

Procedures on challenge of absentee ballots, see Section 7‑15‑420.

Proof of right to vote, provisional ballot, purpose of requirement, see Section 7‑13‑710.

LIBRARY REFERENCES

29 C.J.S., Elections Section 209.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 63, Challenged Ballots.

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

S.C. Jur. Elections Section 76, Challenged Ballots.

S.C. Jur. Elections Section 77, Absentee Ballots.

Attorney General’s Opinions

Failure of the Board of Canvassers to hear objections to challenged ballots at their first meeting after the election, as required by this section [Code 1962 Section 23‑400.61], should not have the effect of denying the voter his right to cast ballot nor the person elected his right to the office. 1971‑72 Op Atty Gen, No. 3419, p 297.

NOTES OF DECISIONS

In general 1

1. In general

Irregularity as to compromised secrecy of challenged ballots did not affect fundamental integrity of municipal election for mayor and town council or give rise to a constitutional violation sufficient to set aside election results. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 477

A poll manager is not required to issue a challenge ballot to a voter who was denied the right to vote unless the voter insists; requiring the voter to insist on a challenge ballot at the poll preserves the record and prevents after‑the‑fact challenges to otherwise proper elections. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131. Election Law 528

In an action challenging election results, the plaintiff was not allowed to base his challenge on the denial to certain voters of the opportunity to vote where neither the voters, watchers, electors, nor managers insisted that the voters be given a challenge ballot. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131.

A vote may be challenged by a watcher, elector, or manager. Greene v. South Carolina Election Com’n (S.C. 1994) 314 S.C. 449, 445 S.E.2d 451, rehearing denied, certiorari denied 115 S.Ct. 580, 513 U.S. 1017, 130 L.Ed.2d 495, rehearing denied 115 S.Ct. 1179, 513 U.S. 1185, 130 L.Ed.2d 1131.

County Board of Canvassers should have held hearing on challenges that certain voters were not residents of precinct in which they voted where challenger, precinct manager, was present for purposes of sustaining challenges and thus, requirement of Section 7‑13‑830 was met; challenger does not forfeit his right to challenge by failing to appear at meeting about which he was not told; thus, where Board did not give usual notice of its meeting, challenged ballots must be canvassed after notice to all interested parties; State Board of Canvassers’ finding that evidence was uncontroverted that 15 ballots had been cast in given precinct, but in fact poll list and ballots established that only 9 votes were cast, must be reversed, and since all reasonable inferences must be drawn in favor of validity of contested election, choice between two inferences must be made in favor of validity of contested election. Trapp v. South Carolina Bd. of State Canvassers (S.C. 1979) 273 S.C. 163, 255 S.E.2d 670.

The state committee properly excluded certain ballots that were found outside ballot boxes where the requirement directing that such votes be decided at a meeting held pursuant to Section 7‑17‑510 was not fulfilled. Gregory v. South Carolina Democratic Executive Committee (S.C. 1978) 271 S.C. 364, 247 S.E.2d 439.

**SECTION 7‑13‑840.** Ballot boxes; number, location, construction, color, labeling.

 There shall be provided for each voting place a sufficient number of boxes to meet the anticipated requirements. In general and special elections they shall be provided by the board of voter registration and elections; in primaries by the county committee. There shall always be provided at least one box for each kind of ballot used. An opening shall be made in the lid of each box not larger than sufficient for a single ballot to be inserted therein at one time, through which the ballot shall be inserted by the person voting and by no other. Each box shall be provided with a sufficient lock and shall be publicly opened and inspected, to show that it is empty and secure, and locked just before the opening of the poll. The keys shall be returned to the managers and the box shall not be opened during the election. Each box shall be labeled in plain and distinct roman letters with the office or officers voted for and shall be painted in a color corresponding to the proper ballot to be placed therein, or have sample ballots conspicuously affixed to the box in which like ballots are to be deposited, and the managers, on the demand of the voter, shall be required to read to him the names of the boxes. The ballot boxes shall be so located as to be in view of the persons outside of the rail at the polling place during the time of the voting.

HISTORY: 1962 Code Section 23‑400.62; 1952 Code Section 23‑354; 1950 (46) 2059; 1966 (54) 2340.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

LIBRARY REFERENCES

29 C.J.S., Elections Section 194.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 12, Duties.

S.C. Jur. Elections Section 52, Setting Up Polling Area.

**SECTION 7‑13‑850.** Closing polls; voters waiting may vote.

 At the time for closing the polls the chairman of the managers shall announce that the polls are closed, but any voters who are in the process of voting or are present waiting to vote shall be allowed to vote before the polls close.

HISTORY: 1962 Code Section 23‑400.63; 1952 Code Section 23‑355; 1950 (46) 2059; 1966 (54) 2340.

LIBRARY REFERENCES

29 C.J.S., Elections Section 198.

**SECTION 7‑13‑860.** Watchers; appointment, qualifications, identification, and conduct.

 Each candidate who is not unopposed in a primary and each nonpartisan candidate, including announced write‑in candidates in a general or special election, may appoint a watcher for any voting place where his name appears on the ballot. However, in any general or special election, all candidates who are certified by a political party must be jointly represented at each polling place by not more than two watchers from the party for each one thousand registered voters or fraction thereof registered at the polling place. Each watcher appointed hereunder must be a qualified voter in the county where he is to watch, and must be certified, in writing, to the managers of the voting precinct to which assigned. This certification must be signed by the primary or nonpartisan candidate or, in the case of watchers jointly representing all candidates of a political party, by an appropriate party official. Watchers must, at all times, wear visible identification specifying the candidate or party, as appropriate, which they represent. The identification badge of a poll watcher may not exceed four and one‑fourth inches by four and one‑fourth inches with individual letters on the badge not exceeding one‑quarter inch in height or width. Badges may not be a color that has a fluorescent quality. After qualification, watchers must be placed in an area designated by the poll managers where the watchers can observe the entire election process at that polling place. No watcher may conduct himself in a manner that will interfere in the orderly conduct of the election or influence any voter in the casting of his ballot.

HISTORY: 1962 Code Section 23‑400.64; 1952 Code Section 23‑345; 1950 (46) 2059; 1966 (54) 2340; 1996 Act No. 252, Section 1, eff April 1, 1996; 1996 Act No. 434, Section 12, eff June 4, 1996.

Effect of Amendment

The first 1996 amendment (by Act No. 252) substituted “the” for “such” throughout this section, replaced “shall” with “must” in the second and fifth sentences and with “may” in the final sentence, substituted “a primary and each nonpartisan candidate, including announced write‑in candidates in a general or special election” for “the primary and each candidate in a general election”, substituted “where his name appears on the ballot. However,” for “that he may desire. Provided, however, that”, deleted “that they may desire” preceding “by not more than two watchers” in the second sentence, in the third sentence substituted “Each” for “Every” and inserted “, in writing,” preceding “to the managers”, substituted “. This certification must be signed by the primary or nonpartisan candidate or, in the case of watchers jointly representing all candidates of a political party, by an appropriate party official. Watchers must, at all times, wear visible” for “, in writing, signed by the candidate or by an appropriate party official as having been designated to so act. Such watchers shall, at all times, wear appropriate, visible”, in the fifth sentence inserted “, as appropriate,” preceding “which they represent”, inserted the sixth, seventh, and eighth sentences, and deleted “such” following “No” at the beginning of the final sentence.

The second 1996 amendment (by Act No. 434) in the seventh sentence substituted “may not be a color that has a fluorescent quality” for “must be printed on white or yellow paper with red, white, or blue ink”.

CROSS REFERENCES

Opening and counting of absentee ballots in presence of watcher appointed pursuant to this section, see Section 7‑15‑420.

LIBRARY REFERENCES

29 C.J.S., Elections Section 200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 64, Poll Watchers.

Attorney General’s Opinions

The Governor has until midnight on the fifth day to properly return his veto of a bill to the house in which it originated. Such time cannot be restricted either because the legislative body has recessed for the day or because of the close of the business day. 1994 Op Atty Gen, No. 94‑28, p. 67.

ARTICLE 9

Voting Provisions Applicable to Primary Elections Only

**SECTION 7‑13‑1010.** Additional oath of voters.

 The managers at each box shall require every voter to take the following additional oath and pledge: “I do solemnly swear or affirm that I am duly qualified to vote at this primary election and that I have not voted before at this primary election or in any other party’s primary election or officially participated in the nominating convention for any vacancy for which this primary is being held.”

HISTORY: 1962 Code Section 23‑400.71; 1952 Code Section 23‑379; 1950 (46) 2059; 1964 (53) 1809; 1966 (54) 2340; 1972 (57) 2441.

RESEARCH REFERENCES

ALR Library

120 ALR 5th 125 , Constitutionality of Voter Participation Provisions for Primary Elections.

Encyclopedias

S.C. Jur. Elections Section 43, Oath.

S.C. Jur. Elections Section 44, Election.

Attorney General’s Opinions

Section 7‑13‑1010 does not prohibit persons who voted in one party’s primary in June from voting in another party’s upcoming primary to nominate candidates for office which did not originally appear on June ballot. 1984 Op Atty Gen, No. 84‑105, p. 246.

NOTES OF DECISIONS

In general 1

Freedom of association 2

1. In general

The real intent of this section [Code 1962 Section 23‑400.71] is to prevent a voter from participating in nominating primaries of two parties in the same election. Gordon v. Executive Committee of Democratic Party of City of Charleston (D.C.S.C. 1971) 335 F.Supp. 166.

Locking a citizen into a party is unconstitutional. No sound or compelling purpose can possibly justify “locking” a citizen into a party and denying to him for a full year freedom to change parties. Such an arbitrary restraint upon the voter is both unreasonable and unconstitutional. Gordon v. Executive Committee of Democratic Party of City of Charleston (D.C.S.C. 1971) 335 F.Supp. 166.

Thus former provision of oath was unconstitutional. Before the 1972 amendment, the concluding phrase of the oath required by this section [Code 1962 Section 23‑400.71] purported to disqualify a voter from exercising his freedom of the ballot in the primary of one party merely because he had voted in the primary of another party within one year, and was an unconstitutional limitation upon the voter’s freedom of the ballot. Gordon v. Executive Committee of Democratic Party of City of Charleston (D.C.S.C. 1971) 335 F.Supp. 166. Election Law 67

But the purpose of the section could be sustained without giving effect to the unconstitutional provision of the oath as it stood before the 1972 amendment. Excising this unconstitutional limitation, the section only denied to the voter the right to participate in two primary elections preliminary to the same general or special election. Gordon v. Executive Committee of Democratic Party of City of Charleston (D.C.S.C. 1971) 335 F.Supp. 166.

Participation in organizational meeting. The only reasonable inference that can be drawn from participation in a political party’s precinct club organizational meeting is membership in that political party; such participation does not give rise to an inference that the elector has “officially participated” in that party’s nominating convention within the meaning of this section. Drawdy v. South Carolina Democratic Executive Committee (S.C. 1978) 271 S.C. 415, 247 S.E.2d 806.

Persons taking oath are not disqualified to vote in general election against candidate nominated in primary election. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

2. Freedom of association

South Carolina’s open primary laws, which allowed a voter to request the ballot for any party’s primary whether or not voter was registered as a member of that party but allowed voter to cast vote in only one party’s primary election, did not facially burden political parties’ right to freedom of association; even if a political party could not conduct a closed primary, the party could opt out of the primary method and use alternative methods of nomination authorized under South Carolina election laws, including convention method and petition method, allowing parties to associate with only those people approved for membership in the party. Greenville County Republican Party Executive Committee v. South Carolina, 2011, 824 F.Supp.2d 655, motion to amend denied 2011 WL 2910360, appeal dismissed 604 Fed.Appx. 244, 2015 WL 1188395. Constitutional Law 1468; Election Law 67

**SECTION 7‑13‑1020.** Absentee voting not permitted in primaries; exceptions.

 Absentee enrollment and absentee voting may not be provided for by party rules or permitted in any primary election, except as provided in Section 7‑13‑1030 or in Chapter 15 of this Title.

HISTORY: 1962 Code Section 23‑400.77; 1952 Code Section 23‑384; 1950 (46) 2059; 1953 (48) 423; 1960 (51) 1598; 1966 (54) 2340.

CROSS REFERENCES

Furnishing absentee ballots and other primary election materials to county board of registration, see Section 7‑15‑365.

**SECTION 7‑13‑1030.** Voting by National Guard when on duty.

 In case the National Guard of South Carolina is called to active duty, is mobilized or is participated in field training, the State committee shall provide for the voting of all members of the National Guard qualified to vote, whether such members are within the State or elsewhere.

HISTORY: 1962 Code Section 23‑400.78; 1952 Code Section 23‑385; 1950 (46) 2059; 1953 (48) 423; 1960 (51) 1598; 1966 (54) 2340.

**SECTION 7‑13‑1040.** No person to vote in more than one primary on same day.

 No person shall be entitled to vote in more than one party primary election held the same day.

HISTORY: 1962 Code Section 23‑400.79; 1952 Code Section 23‑382; 1950 (46) 2059; 1966 (54) 2340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 43, Oath.

NOTES OF DECISIONS

In general 1

1. In general

Intent of Code 1962 Section 23‑400.71 is obvious from this section [Code 1962 Section 23‑400.79]. ‑ The real intent of Code 1962 Section 23‑400.71, to prevent a voter from participating in nominating primaries of two parties in the same election, is obvious from this section [Code 1962 Section 23‑400.79], which proscribes specifically a voter’s participation in more than one primary election preliminary to the same general or special election. Gordon v. Executive Committee of Democratic Party of City of Charleston (D.C.S.C. 1971) 335 F.Supp. 166.

ARTICLE 11

Canvassing and Counting of Ballots

**SECTION 7‑13‑1110.** Counting ballots and declaration of result; volunteer personnel may assist.

 At the close of the election the managers and clerk shall immediately proceed publicly to open the ballot boxes and count the ballots therein and shall continue such count, without adjournment or interruption, until it is completed. They shall then make and sign such statement of the result thereof as the nature of the election shall require. At the completion of the vote counting a duplicate of the statement and return of votes must be published by posting it in a conspicuous site at the polling places, except in counties where vote recorders are used for voting.

 Managers of election are authorized to use additional volunteer personnel in counting the ballots. None of such personnel shall be a candidate or watcher for a candidate for an office voted on in the election and shall be required to take the following oath prior to assuming their duties: “I do solemnly swear or affirm that I am not a candidate or watcher in this election, am a qualified elector of this county, that I will count the ballots entrusted to my care in a fair and impartial manner, and make to the best of my ability a correct tabulation of the results.” The managers shall be required to make a list of all such counters and turn such list in with other election material. The provisions of this section shall not apply to the counting of ballots at any precinct using vote recorders which require the ballot cards to be counted with the use of a tabulating machine.

HISTORY: 1962 Code Section 23‑400.91; 1952 Code Section 23‑356; 1950 (46) 2059; 1966 (54) 2340; 1968 (55) 2316; 1970 (56) 1998; 1982 Act No. 280, Section 2, eff February 24, 1982; 1986 Act No. 398, eff May 6, 1986.

Effect of Amendment

The 1982 amendment made a number of changes to Chapter 15 of Title 7 with reference to absentee registration and voting, but this section was not affected.

The 1986 amendment added to the first paragraph the provision relative to posting of a duplicate of the statement and return of votes at polling places.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 221 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 64, Poll Watchers.

S.C. Jur. Elections Section 80, Posting Results.

NOTES OF DECISIONS

In general 1

1. In general

A poll manager’s failure to count all absentee ballots without interruption and without adjournment did not affect the result of the election, although such failure was a violation of Section 7‑13‑1110, and a new election was not required where the evidence indicated that the absentee ballots which were set aside on election night had been secured and that no tampering had occurred. Knight v. State Bd. of Canvassers (S.C. 1988) 297 S.C. 55, 374 S.E.2d 685. Election Law 479

Election set aside upon the ground that the ballots were counted in secret. McKnight v. Smith (S.C. 1937) 182 S.C. 378, 189 S.E. 361.

The mere failure of the managers and the clerk to sign the result, in absence of fraud, does not vitiate the election. Wright v. State Board of Canvassers (S.C. 1907) 76 S.C. 574, 57 S.E. 536.

**SECTION 7‑13‑1120.** Disposition of improperly marked ballots.

 If a voter marks more names than there are persons to be elected or nominated to an office or if for any reason it is impossible to determine the voter’s choice for any office to be filled, his ballot shall not be counted for such office; but this shall not vitiate the ballot, so far as properly marked. Nothing herein shall be construed to prevent any voter in a general or special election from voting for any qualified person, other than those whose names are printed on the ballot, by writing in the name of the person opposite the office.

HISTORY: 1962 Code Section 23‑400.92; 1952 Code Section 23‑357; 1950 (46) 2059; 1966 (54) 2340; 1972 (57) 2383.

LIBRARY REFERENCES

29 C.J.S., Elections Section 227.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 61, Assistance to Voters‑ Write‑In Vote and Write‑In Absentee Ballot.

S.C. Jur. Elections Section 73, Improperly Marked.

Attorney General’s Opinions

Voting straight party ticket and for unopposed candidate of other party is proper. When a voter marks the ballot for voting a straight party ticket of political party No. 2, but also marks the voting square opposite the name of a candidate of political party No. 1 for an office for which political party No. 2 has offered or nominated no candidate this counts as a vote for the unopposed candidate of political party No. 1. 1965‑66 Op Atty Gen, No. 2124, p 237.

When voting straight party ticket and for individual candidates is improper. If a voter marks the ballot for voting a straight party ticket for political party No. 1, but also marks the individual voting square opposite the name of a candidate of political party No. 2 without scratching out the name of the candidate for that same office offered or nominated by political party No. 1 the voter’s ballot should not be counted for the office involved. 1965‑66 Op Atty Gen, No. 2124, p 237.

Application to special election to fill vacant seats in House of Representatives. The requirement of this section [Code 1962 Section 23‑400.92] as it stood before the 1972 amendment that an elector must vote for not less than exact number of persons to be elected in order for ballot to be counted would apply to a special election held in a county to fill two vacant seats in House of Representatives. 1970‑71 Op Atty Gen, No. 3126, p 77.

The State full‑slate law applies in election of trustees of a county school district. 1969‑70 Op Atty Gen, No. 2824, p 38.

Application of full‑slate law in a multiple‑seat House race where one person is the candidate of more than one party for the same office. 1969‑70 Op Atty Gen, No. 2933, p 187, construing this section [Code 1962 Section 23‑400.92] as it stood before the 1972 amendment.

A voter has marked more names than there are persons to be elected to the office involved by voting a straight party ticket and also marking the square opposite another party’s nominee for one of the offices to be filled on the ballot and the voter’s ballot should not be counted for the office involved. 1965‑66 Op Atty Gen, No. 2124, p 237.

A person not qualified to be placed as a candidate on a ballot would also not be qualified to be a write‑in candidate for that same office. 1992 Op Atty Gen No. 92‑46.

NOTES OF DECISIONS

In general 1

1. In general

Statute pertaining to disposition of improperly marked ballots, which required election personnel to disregard votes if it was impossible to determine voter’s choice for any office to be filled, did not apply to votes which were intelligibly cast but could not be read due to mechanical errors made by a voting machine, since ballots cast by voting machine were not marked and could not be improperly marked; statute applied to manual ballots where either 1) the voter selected more names than were persons to be elected or 2) because of the nature of the voter’s markings, it was unclear for whom the voter intended to vote. Broadhurst v. City of Myrtle Beach Election Com’n (S.C. 2000) 342 S.C. 373, 537 S.E.2d 543, rehearing denied. Election Law 429

A candidate’s challenge to results of an election to fill two vacancies on the county school board was timely even though it did not comply with the filing requirements of Section 7‑17‑30 where the County Board of Canvassers had failed to canvass the votes or make a declaration of the results as required by Section 7‑17‑20 and where the challenge had been filed prior to the county board’s denial of the candidate’s protest, which was the only official action ever taken by the county board relative to the election; the election was properly invalidated on the ground that the “vote for two, strike two” voting instructions were violative of Section 7‑13‑1120 since they imposed full slate voting. Sims v. Ham (S.C. 1980) 275 S.C. 369, 271 S.E.2d 316.

Neither this section nor any other provision of the present general election law requires, expressly or by necessary implication, that in order to vote for a candidate other than the party nominee, the voter must not only write the name of his candidate on the ballot opposite the name of the office, but also scratch out the name of the party nominee. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

**SECTION 7‑13‑1130.** Disposition of ballots found in wrong box and ballots folded together.

 If ballots shall be found on opening the box, upon which shall appear the name of an office or the name of a person in connection with an office other than that for which the box in which such ballot is found shall be designated and labeled, these ballots shall be counted, if in counting the ballots for that office the number of ballots does not exceed the number of names on the poll list. If the number of names on the poll list is exceeded by counting all of the ballots, then none of the ballots for that office found in the incorrect box shall be counted. If, in counting, two or more like ballots shall be found folded together compactly, one shall be counted. The other shall be destroyed. But if they bear different names, all shall be destroyed and none counted.

HISTORY: 1962 Code Section 23‑400.93; 1952 Code Section 23‑358; 1950 (46) 2059; 1965 (54) 242; 1966 (54) 2340.

LIBRARY REFERENCES

29 C.J.S., Elections Section 227.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 74, Wrong Box.

**SECTION 7‑13‑1140.** Procedure when too many ballots found in box or too many votes tabulated.

 If more ballots shall be found on opening the box or if more ballots, which are tabulated by vote recorder equipment, or if the number of votes tabulated on voting machines in any polling place exceeds the number of voters listed on the poll list at such polling place, the vote total for each candidate or issue shall be reduced by that fraction of the excess vote cast that his total vote bears to the total number of votes cast in the polling place. Fractional parts of single votes shall be disregarded.

 If the number of votes cast by any type ballot or on machines in any polling place exceeds the number listed on the polling list by ten percent or more, the county executive committee or the county board of voter registration and elections, as the case may be, shall order a new primary or election at the polling place concerned if the outcome of the election could be affected. Only those who signed the poll list shall be permitted to vote in any such new primary or election.

HISTORY: 1962 Code Section 23‑400.94; 1952 Code Section 23‑359; 1950 (46) 2059; 1966 (54) 2340; 1973 (58) 1860.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

LIBRARY REFERENCES

29 C.J.S., Elections Section 227.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 75, Too Many Ballots in Box.

NOTES OF DECISIONS

In general 1

1. In general

Statute permitting a new election at polling place if number of votes cast exceeded number listed on polling list by 10 percent or more, which limited new election to those voters who signed poll list, did not apply in situation where less votes were accounted for than the number on the poll. Broadhurst v. City of Myrtle Beach Election Com’n (S.C. 2000) 342 S.C. 373, 537 S.E.2d 543, rehearing denied. Election Law 560(4)

**SECTION 7‑13‑1150.** Accounting for ballots after election; returns; delivery of poll lists and other matters; unused ballots.

 When the canvassing and counting of the votes are completed, the chairman of the managers, or one of them to be designated in writing by the managers, shall deliver to the board of voter registration and elections the poll list, the boxes containing the ballots and a written return of the result of the election in the voting precinct. Managers shall account to the board of voter registration and elections of the county for all ballots delivered to them and make the following returns, (a) the number of official ballots furnished to each voting precinct, (b) the number of official ballots spoiled and returned by voters, (c) the number of official ballots returned to the board of voter registration and elections and (d) the number of official ballots actually voted.

 The board of voter registration and elections shall keep in possession all unused ballots, as well as those that have been spoiled, until the time for contesting the election has expired. Any ballot that has been lost must be accounted for by a certificate from the chairman of the managers of the particular precinct covering the circumstances.

HISTORY: 1962 Code Section 23‑400.95; 1952 Code Sections 23‑325, 23‑386; 1950 (46) 2059; 1966 (54) 2340.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 229 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 12, Duties.

S.C. Jur. Elections Section 62, Spoiled Ballots.

S.C. Jur. Elections Section 78, Accounting for Ballots.

**SECTION 7‑13‑1160.** Reporting of election results to State Election Commission.

 Within twenty‑four hours of the completion of the canvassing and counting of ballots, the persons in charge of each such election in each county shall notify the State Election Commission of the unofficial results of such election in each such county; provided, however, that failure to comply with the provisions of this section shall not invalidate the votes cast therein.

HISTORY: 1962 Code Section 23‑400.96; 1966 (54) 2340; 1968 (55) 2316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 79, Reporting to State Election Commission.

**SECTION 7‑13‑1170.** Ordering of new election by Governor.

 When any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate the existing election official or other person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result.

HISTORY: 1962 Code Section 23‑400.97; 1952 Code Section 23‑326; 1942 Code Section 2330; 1932 Code Section 2330; 1931 (37) 272; 1966 (54) 2340; 1988 Act No. 364, Section 4, eff March 14, 1988.

Effect of Amendment

The 1988 amendment deleted language relating to a tie vote, and made grammatical changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 11, Scheduling Elections.

Attorney General’s Opinions

Governor is proper authority to call new election regarding incorporation of St. Andrews in light of Section 7‑13‑1170 and in absence of any provision having been made by law for holding new referendum where initial referendum has been declared void. 1985 Op Atty Gen, No. 85‑38, p 125.

Governor may order special election when governing body refuses to call election as required by Section 4‑9‑90; when a councilman is suspended and replacement appointed upon conviction/plea of suspended officer, temporary appointee may continue to hold until successor is elected. 1980 Op Atty Gen, No. 80‑45, p 91.

Where statutes provide for an election and none is held, Governor has statutory authority to order an election. 1968‑69 Op Atty Gen, No. 2608, p 1.

NOTES OF DECISIONS

In general 1

1. In general

A school district is a political subdivision of the State. Easler v. Maybank (S.C. 1939) 191 S.C. 511, 5 S.E.2d 288.

Satisfaction of the Governor. The legislature never intended that the Governor could close his eyes to an admitted fact and say that such fact had not been made to appear to his satisfaction. Easler v. Maybank (S.C. 1939) 191 S.C. 511, 5 S.E.2d 288.

Mandamus issued compelling Governor to order new elections. Easler v. Maybank (S.C. 1939) 191 S.C. 511, 5 S.E.2d 288.

ARTICLE 13

Vote Recorders

**SECTION 7‑13‑1310.** Repealed by 2005 Act No. 63 Section 5, eff May 16, 2005.

Editor’s Note

Former Section 7‑13‑1310 was entitled “Authority of counties to procure and authorize use of vote recorders” and was derived from 1962 Code Section 23‑400.101; 1970 (56) 2022.

**SECTION 7‑13‑1320.** Use of vote recorders in certain precincts; use of vote recorders of different kinds; number and capacity of vote records.

 (a) The use of an optical scan voting system may be authorized for use in absentee precincts in a county.

 (b) The county board of voter registration and elections shall provide an optical voting system in such numbers as it considers necessary in good working order and of sufficient capacity to accommodate the names of all candidates for all party offices and nominations and public offices that, under the provisions of existing laws and party rules, are to be voted for at any primary or other election.

HISTORY: 1962 Code Section 23‑400.102; 1970 (56) 2022; 2005 Act No. 63, Section 2, eff May 16, 2005.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 2005 amendment, in subsection (a), substituted “an optical scan voting system” for “vote recorders” and “absentee” for “some” and deleted “without requiring their use in all precincts” following “county”; deleted subsection (b) allowing different kinds of vote recorders to be used in different precincts within a county; redesignated subsection (c) as subsection (b) and substituted “an optical voting system” for “vote recorders” and “considers” for “deems”.

CROSS REFERENCES

State Election Commission regulations, see S.C. Code of Regulations R. 45‑1 et seq.

**SECTION 7‑13‑1330.** Vote recorders and optical scan voting systems; approval process; duration and changes.

 (A) Before any kind of optical scan voting system is used at any election, it must be approved by the State Election Commission, which shall examine the optical scan voting system and make and file in the commission’s office a report, attested by the signature of the commission’s executive director, stating whether, in the commission’s opinion, the kind of optical scan voting system examined may be accurately and efficiently used by electors at elections, as provided by law. An optical scan voting system may not be approved for use in the State unless certified by a testing laboratory accredited by the Federal Election Assistance Commission as meeting or exceeding the minimum requirements of federal voting system standards.

 (B) No kind of vote recorder not approved pursuant to this section shall be used at any election and if, upon the reexamination of any type vote recorder previously approved, it appears that the vote recorder so reexamined can no longer be accurately and efficiently used by electors at elections as provided by law, the approval of the vote recorder must immediately be revoked by the State Election Commission, and no such type vote recorder shall thereafter be purchased for use or used in this State.

 (C) If a vote recorder, including an optical scan voting system, which was approved for use before July 1, 1999, is improved or otherwise changed in a way since its approval that does not impair its accuracy, efficiency, or capacity, the vote recorder may be used in elections. However, if the software, hardware, or firmware of the system is improved or otherwise changed, the system must comply with the requirements of subsection (A).

 (D) Any person or company who requests an examination of any type of vote recorder or optical scan voting system shall pay a nonrefundable examination fee of one thousand dollars for a new voting system and a nonrefundable examination fee of five hundred dollars for an upgrade to any existing system to the State Election Commission. The State Election Commission may at any time, in its discretion, reexamine any vote recorder or optical scan voting system when evidence is presented to the commission that the accuracy or the ability of the system to be used satisfactorily in the conduct of elections is in question.

 (E) Any person or company who seeks approval for any vote recorder or optical scan voting system in this State must file with the State Election Commission a list of all states or jurisdictions in which the system has been approved for use. This list must state how long the system has been used in the state; contain the name, address, and telephone number of that state or jurisdiction’s chief election official; and must disclose any reports compiled by state or local government concerning the performance of the system. The vendor is responsible for filing this information on an ongoing basis.

 (F) Any person or company who seeks approval for any vote recorder or optical scan voting system must file with the State Election Commission copies of all contracts and maintenance agreements used in connection with the sale of the voting system. All changes to standard contracts and maintenance agreements must be filed with the State Election Commission.

 (G) Any person or company who seeks approval for any vote recorder or optical scan voting system must conduct, under the supervision of the State Election Commission and any county board of voter registration and elections, a field test for any new voting system, as part of the certification process. The field test shall involve South Carolina voters and election officials and must be conducted as part of a scheduled primary, general, or special election. This test must be held in two or more precincts, and all costs relating to the voting system must be borne by the vendor. The test must be designed to gauge voter reaction to the system, problems that voters have with the system, and the number of voting units required for the efficient operation of an election. The test must also demonstrate the accuracy of votes cast and reported on the system.

 (H) Before an optical scan voting system may be used in elections in the State, all source codes for the system must be placed in escrow by the manufacturer, at the manufacturer’s expense, with the authority approved by the Federal Election Assistance Commission. These source codes must be available to the State Election Commission in case the company goes out of business, pursuant to court order, or if the State Election Commission determines that an examination of these source codes is necessary. The manufacturer shall place all updates of these source codes in escrow, and notify the State Election Commission that this requirement has been met.

 (I) After a vote recorder or optical scan voting system is approved, an improvement or change in the system must be submitted to the State Election Commission for approval pursuant to this section; however, this requirement does not apply to the technical capability of a general purpose computer or reader to electronically count and record votes or to a printer to accurately reproduce vote totals.

 (J) If the State Election Commission determines that a vote recorder or optical scan voting system that was approved no longer meets the requirements set forth in subsections (A) and (C) or Section 7‑13‑1340, the commission may decertify that system. A decertified system shall not be used in elections unless the system is reapproved by the commission under subsections (A) and (C).

 (K) Neither a member of the State Election Commission, any county board of voter registration and elections or custodian, nor a member of a county governing body shall have any pecuniary interest in any vote recorder, or in the manufacture or sale of the vote recorder.

HISTORY: 1962 Code Section 23‑400.103; 1970 (56) 2022; 1999 Act No. 103, Section 4, eff June 30, 1999; 2005 Act No. 63, Section 3, eff May 16, 2005.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1999 amendment rewrote the section.

The 2005 amendment rewrote subsections (A) and (H) relating to optical scan voting systems.

**SECTION 7‑13‑1340.** Requirements for vote recorders or optical scan voting devices.

 A vote recorder or optical scan voting device must not be adopted or used unless it:

 (a) provides facilities for voting for the candidates as may be nominated and upon the questions as may be submitted;

 (b) permits each elector, at other than primaries, to vote a straight party or body ticket, in one operation; and, in one operation, to vote for all the candidates of one party or body for every office to be voted for, except those offices as to which the elector votes for individual candidates;

 (c) permits each elector, at other than primaries, to vote a ticket selected from the nominees of any and all parties or bodies, from independent nominations, and from persons not in nomination;

 (d) permits each elector to vote, at any election, for any person and for any office for whom and for which the elector is lawfully entitled to vote, whether or not the name of the person or persons appears upon a ballot label as a candidate for election, and to vote for as many persons for an office as the elector is entitled to vote for, and to vote for or against any question upon which the elector is entitled to vote;

 (e) precludes, when used in conjunction with a tabulating machine, the counting of votes for any candidate, or upon any question, for whom or upon which an elector is not entitled to vote, and precludes the counting of votes for more persons for any office than the elector is entitled to vote for or for fewer than the elector is required to vote for, and precludes the counting of votes for any candidate for the same office or upon any question more than once;

 (f) permits voting in absolute secrecy, so that a person shall not see or know for whom any other elector has voted or is voting, except an elector whom the person has assisted or is assisting in voting, as prescribed by law;

 (g) is constructed of material of good quality, in a neat and workmanlike manner;

 (h) records, when properly operated, correctly and accurately every vote cast;

 (i) is constructed so that an elector may readily learn the method of operating it;

 (j) is safely transportable; and

 (k) if approved after July 1, 1999, or if an upgrade in software, hardware, or firmware is submitted for approval as required by Section 7‑13‑1330(C), is able to electronically transmit vote totals for all elections to the State Election Commission in a format and time frame specified by the commission.

HISTORY: 1962 Code Section 23‑400.104; 1970 (56) 2022; 1999 Act No. 103, Section 5, eff June 30, 1999; 2006 Act No. 223, Section 1, eff February 3, 2006.

Effect of Amendment

The 1999 amendment added subsection (k).

The 2006 amendment rewrote this section to include optical scan voting devices, delete the provisions requiring separate votes for presidential electors, and make nonsubstantive grammatical and language changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 67, Methods of Voting‑ Vote Recorder.

**SECTION 7‑13‑1350.** Payment for vote recorders.

 The governing body of any county which adopts vote recorders in the manner provided for by this article shall, upon the purchase thereof, provide for payment therefor by the county.

HISTORY: 1962 Code Section 23‑400.105; 1970 (56) 2022.

**SECTION 7‑13‑1360.** Form and contents of ballot labels; primary elections.

 (a) The ballot labels shall be printed in black ink, upon clear, white material, of such size and arrangement as will suit the construction of the vote recorder, and in plain, clear type so as to be easily readable by persons with normal vision.

 (b) The arrangement of offices, names of candidates and questions upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of same on paper ballots. Provided, however, that such form may be varied in order to present a clear presentation of candidates and questions to the electors. In the event that there are more candidates for any office than can be placed upon one page, the label shall be clearly marked to indicate that the names of candidates for the office are continued on the following page.

 (c) The form and arrangement of ballot labels shall be prescribed and prepared by the State Election Commission.

 (d) In primaries, separate vote recorders may be used for each political party. If the same vote recorder is used for two or more political parties on the same day, the ballot cards of each party shall be clearly identified and so designed that only votes cast for candidates of that party will be counted by the tabulating machine.

HISTORY: 1962 Code Section 23‑400.106; 1970 (56) 2022.

**SECTION 7‑13‑1370.** Ballot cards.

 Ballot cards shall be of suitable design, size and stock, as prescribed by the State Election Commission, to permit processing by a tabulating machine. A serially‑numbered stub and strip shall be attached to each ballot card in a manner and form similar to that prescribed by law for paper ballots.

HISTORY: 1962 Code Section 23‑400.107; 1970 (56) 2022.

**SECTION 7‑13‑1371.** Ballot cards used in conjunction with optical scanning device; instructions.

 (A) Ballot cards used in conjunction with an optical scanning device must include an instruction to vote both sides of the ballot card. This instruction must appear conspicuously at the top and at the bottom of the front side of the ballot card and must be printed in bold‑faced type at least as large as the largest type on the ballot card.

 (B) The State Election Commission must establish the form of a sign to be displayed in any polling place utilizing an optical scanning device. This sign must notify voters to vote both sides of the ballot card and must be displayed in three conspicuous places in the polling place.

HISTORY: 1986 Act No. 418, eff May 13, 1986; 1992 Act No. 418, Section 1, eff June 1, 1992.

Effect of Amendment

The 1992 amendment deleted former subsection (b), relative to the form of ballot card used during Presidential election or primary, redesignated former subsection (a) as (A), and redesignated former subsection (c) as (B).

LIBRARY REFERENCES

29 C.J.S., Elections Section 156.

**SECTION 7‑13‑1380.** Write‑in votes.

 Electors shall be permitted to cast write‑in votes. The design of the ballot card shall permit the managers in counting the write‑in votes to determine readily whether an elector has cast any write‑in vote not authorized by law. The State Election Commission in specifying the form of the ballot shall provide for ballot secrecy in connection with write‑in votes.

HISTORY: 1962 Code Section 23‑400.108; 1970 (56) 2022.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 61, Assistance to Voters‑ Write‑In Vote and Write‑In Absentee Ballot.

**SECTION 7‑13‑1390.** Labeling, preparation, and testing of vote recorders; custodians and deputies; examination by interested persons.

 (a) The election officials of each county shall cause the proper ballot labels to be placed on each vote recorder which is to be used in any election within such county and shall cause each vote recorder to be placed in proper order for voting.

 (b) The election officials of each county shall appoint one custodian of vote recorders, and such deputy custodians as may be necessary, whose duty it shall be to prepare the vote recorders to be used in county elections. Each custodian and deputy custodian shall receive such compensation as provided for in the annual county appropriation. Such custodian shall, under the direction of the county election officials, have charge of and represent them during the preparation of the vote recorders as required by this article, and he and the deputy custodians, whose duty it shall be to assist him in the discharge of his duties, shall serve at the pleasure of the county election officials.

 (c) On or before the third day preceding an election, the county election officials shall have the tabulating machines tested to ascertain that they will correctly count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be made at least five days prior thereto. Representatives of political parties and bodies, candidates, news media and the public shall be permitted to observe such tests. The test shall be conducted by processing a preaudited group of ballot cards clearly marked for such purpose, not to exceed fifty for each candidate or question, so punched or marked as to record a predetermined number of valid votes for each candidate and on each question, and shall include for each office one or more ballot cards which have votes in excess of or less than the number allowed by law in order to test the ability of the tabulating machine to reject such votes. The tabulating machine shall not be approved unless it produces an errorless counting. If any error is detected, the cause therefor shall be ascertained and corrected, and an errorless count shall be made before the machine is approved. The same test shall be repeated immediately before the start of the official count of the ballot cards and at the conclusion of such count. The county election officials or custodian shall also prepare the vote recorders for voting at the various polling places to be used in the election. In preparing the vote recorders, they shall arrange the recorders and the ballot labels so that they meet all requirements of voting and counting at such primary or election, thoroughly inspect and test the vote recorders, and file a certificate, as prescribed by the State Election Commission, in the office of the county election officials that the recorders are in proper order with correct ballot labels.

 (d) Prior to the election, no county election officials, nor custodian, nor other employee shall in any way prevent free access to and examination of all voting machines which are to be used at the election under proper supervision and, at reasonable times, by any interested persons.

HISTORY: 1962 Code Section 23‑400.109; 1970 (56) 2022.

**SECTION 7‑13‑1400.** Delivery of vote recorders; duties of officials at polling places.

 (a) The county election officials shall deliver the proper vote recorder or vote recorders, properly furnished with ballot labels, to the polling places at least one hour before the time set for opening the polls at each election, and shall cause each vote recorder to be set up in the proper manner for use in voting. Such election officials shall place each vote recorder in a voting booth so that the ballot labels on the recorder can be plainly seen by the poll officers when not being voted on.

 (b) The county election officials shall provide ample protection against molestation of and injury to the vote recorder and, for that purpose, shall call upon any law‑enforcement officer to furnish such assistance as may be necessary, and it shall be the duty of the law‑enforcement officer to furnish such assistance when so requested by such officials.

 (c) The poll manager shall furnish for each vote recorder at least one hour before the opening of the polls:

 (1) Sufficient light to enable electors, while in the voting booth, to read the ballot labels and suitable for the use of poll officers in examining the vote recorder.

 (2) Two sample ballots printed on a single sheet of white paper or a number of sheets stapled together which shall be a reasonable facsimile of the ballot labels to be used in the primary or election, and accompanied by directions for voting on the vote recorder; and such sample ballots shall be posted prominently outside the enclosed space within the polling place.

 (3) A seal for sealing the vote recorder after the polls are closed and such other materials and supplies as may be necessary or as may be required by law or by rules and regulations of the State Election Commission.

HISTORY: 1962 Code Section 23‑400.110; 1970 (56) 2022.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 52, Setting Up Polling Area.

**SECTION 7‑13‑1410.** Duties of officials after closing of polls; review of ballots; duplicate ballots.

 Immediately following the closing of the polls, the manager shall:

 (a) Count the number of electors who voted, as shown in the poll list.

 (b) Count the unused ballots without removing stubs.

 (c) Count the soiled and defaced ballots.

 (d) Insert the totals of (a), (b) and (c) of this section on the report forms provided therefor.

 (e) Count and secure or inactivate all marking devices in the polling place so that no device may be used or operated by any unauthorized person in the polling place.

 (f) Remove the voted ballots from the containers and sort them according to types or parts of ballots if more than one type or part has been used. If the number of voted ballots exceeds the number of voters whose names appear upon the poll list, the managers shall enter on the poll list an explanation of such discrepancy. Any manager having a different explanation shall enter it on the poll list and subscribe to it.

 Before leaving the precinct, each ballot shall be reviewed and, if there appear markings other than by the marking device or there are names of candidates in spaces authorized for write‑in votes, such write‑in votes shall be tabulated by the precinct officials and the results certified to the counting station. In such instance, the precinct officials shall first determine, for the contest in which a write‑in vote has been cast, that the voter on such ballot has not, for such contest, voted contrary to the voting instructions for such contest. If it is determined that the voter has not violated such instructions, write‑in votes shall be tabulated and the ballot shall be reinserted with the remainder of the ballots. If it is determined that the voter has violated the instruction for marking the ballot, then the entire ballot shall be tabulated by the precinct officials and the results certified to the counting station, or the county board of voter registration and elections may cause a duplicate to be made of that part of the ballot marked according to such instructions.

 Provided, that if it appears that a ballot is so torn, bent, or otherwise defaced or has been marked by other than the marking device, so that it cannot be counted by the automatic tabulating equipment, the county board of voter registration and elections may cause a duplicate of each such ballot to be marked so that it can be so counted.

 Such duplicate ballots, when so authorized by the board of voter registration and elections, shall be prepared at the counting station in the presence of witnesses and substituted for the original ballots, which duplicate ballots shall be counted by the automatic tabulating equipment. The original ballots shall be preserved and all such duplicate ballots shall be clearly labeled with the word “duplicate” and shall bear a serial number which shall also be recorded on the original. At the counting station, write‑in votes tabulated by the precinct officials shall be added to the results from ballots tabulated with the automatic tabulating equipment and the totals certified as the precinct count on the summary sheet.

 (g) Put the unused ballots with the stubs attached, and soiled and defaced ballots with the stubs attached, in the envelopes or containers provided and certify the number. The voted ballots shall be placed in designated containers provided by the county board of voter registration and elections for use with automatic tabulating equipment, sealed, and the containers shall be sealed. Officials duly authorized by the county board of voter registration and elections shall then transport all of the ballots, precinct election supplies and records to the location designated by the board of voter registration and elections for the processing or counting, or both, of such ballots.

HISTORY: 1962 Code Section 23‑400.111; 1970 (56) 2022.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 75, Too Many Ballots in Box.

S.C. Jur. Elections Section 78, Accounting for Ballots.

**SECTION 7‑13‑1420.** Observation by poll watchers after polls close.

 Poll watchers shall be allowed to remain in the polling place after the polls close and may observe the processing of the ballots and the sealing of the containers.

HISTORY: 1962 Code Section 23‑400.112; 1970 (56) 2022.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 64, Poll Watchers.

**SECTION 7‑13‑1430.** Counting stations; processing and counting of ballots and preparation of summary sheets.

 In counties where marking devices and automatic tabulating equipment have been adopted, the county board of voter registration and elections shall establish one or more counting stations to receive voted ballots and other precinct election supplies after the polling precincts are closed. Such stations shall be under the supervision and direction of the board of voter registration and elections. Processing and counting of voted ballots and the preparation of summary sheets shall be done in the presence of witnesses approved by the board of voter registration and elections.

HISTORY: 1962 Code Section 23‑400.113; 1970 (56) 2022.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 67, Methods of Voting‑ Vote Recorder.

**SECTION 7‑13‑1440.** Witnesses are to observe at counting station.

 Witnesses shall not be allowed in the polling place but shall file their certificates of appointment at the proper counting station after the polls close and may observe all functions there.

HISTORY: 1962 Code Section 23‑400.114; 1970 (56) 2022.

**SECTION 7‑13‑1450.** Public display of vote recorders preceding election.

 During the thirty days next preceding a general election or during the ten days next preceding a special election, the county election officials shall place on public exhibition, in such public places and at such times as they may deem most suitable for the information and instruction of the electors, one or more vote recorders containing the ballot labels and showing the offices and questions to be voted upon, the names and arrangements of parties and bodies and, so far as practicable, the names and arrangements of the candidates to be voted for. Such recorder or recorders shall be under the charge and care of a person competent as custodian and instructor.

HISTORY: 1962 Code Section 23‑400.115; 1970 (56) 2022.

**SECTION 7‑13‑1460.** Use of paper ballots where use of vote recorders is not possible or practicable.

 If a method of election for any candidate or office or of voting on any question is prescribed by law in which the use of vote recorders is not possible or practicable, or in case at any election the number of candidates seeking nomination or nominated for any office renders the use of vote recorders for such office at such election impracticable, or if for any other reason at any election the use of vote recorders wholly or in part is not practicable, the county election officials may arrange to have the voting for such candidates or offices or for such questions conducted by paper ballots. In such cases, paper ballots shall be printed for such candidates, offices or questions, and the election conducted by the poll managers herein provided for, and the ballots counted and return thereof made in the manner required by law for such nominations, offices or questions, insofar as paper ballots are used.

HISTORY: 1962 Code Section 23‑400.116; 1970 (56) 2022.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

**SECTION 7‑13‑1470.** Procedure where vote recorder becomes out of order.

 If any vote recorder being used in any election shall become out of order during such election, it shall be repaired, if possible, or another vote recorder substituted by the custodian or county election officials as promptly as possible, for which purpose the governing body of the county may purchase as many extra vote recorders as it may deem necessary, but in case such repair or substitution cannot be made, paper ballots, printed or written and of any suitable form, may be used for the taking of votes.

HISTORY: 1962 Code Section 23‑400.117; 1970 (56) 2022.

CROSS REFERENCES

Use of ballots provided under this section and Section 7‑13‑1870, for elderly or handicapped voters who cannot enter the polling place, see Section 7‑13‑771.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

**SECTION 7‑13‑1480.** Custody, storage, and care of vote recorders.

 The county election officials shall designate a person who shall have the custody of the vote recorders of the county when they are not in use at an election and shall provide for his compensation and for the safe storage and care of the vote recorders. All vote recorders when not in use shall be properly covered and stored in a suitable place or places.

HISTORY: 1962 Code Section 23‑400.118; 1970 (56) 2022.

**SECTION 7‑13‑1490.** Regulations, instructions and forms.

 The State Election Commission shall adopt and promulgate such regulations and instructions and design such forms as it may deem necessary to carry out the purposes of this article. A sufficient number of such regulations, instructions and forms shall be distributed to each county board of voter registration and elections using the voting and counting equipment authorized by the provisions of this article.

HISTORY: 1962 Code Section 23‑400.119; 1970 (56) 2022.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑1500.** Oath of person preparing or operating tabulating devices.

 Any person who prepares or operates the tabulating devices in any election or preparatory thereto shall take an oath as a custodian and file in accordance with law.

HISTORY: 1962 Code Section 23‑400.120; 1970 (56) 2022.

ARTICLE 15

Voting Machines

**SECTION 7‑13‑1610.** State Board of Voting Machine Commissioners.

 The Board of State Canvassers shall, ex officio, constitute the State Board of Voting Machine Commissioners.

HISTORY: 1962 Code Section 23‑401; 1952 Code Section 23‑401; 1950 (46) 2059.

**SECTION 7‑13‑1620.** Voting system approval process.

 (A) Before any kind of voting system, including an electronic voting system, is used at an election, it must be approved by the State Election Commission, which shall examine the voting system and make and file in the commission’s office a report, attested to by the signature of the commission’s executive director, stating whether, in the commission’s opinion, the kind of voting system examined may be accurately and efficiently used by electors at elections, as provided by law. A voting system may not be approved for use in the State unless certified by a testing laboratory accredited by the Federal Election Assistance Commission as meeting or exceeding the minimum requirements of federal voting system standards.

 (B) A person or company who requests an examination of any type of voting system shall pay a nonrefundable examination fee of one thousand dollars for a new voting system. A nonrefundable examination fee of five hundred dollars must be paid for an upgrade to any existing system. The State Election Commission may reexamine any voting system when evidence is presented to the commission that the accuracy or the ability of the system to be used satisfactorily in the conduct of elections is in question.

 (C) A person or company who seeks approval for any type of voting system in this State shall file with the State Election Commission a list of all states or jurisdictions in which that voting system has been approved for use. This list must state how long the system has been used in the state; contain the name, address, and telephone number of that state or jurisdiction’s chief election official; and disclose any reports compiled by state or local government concerning the performance of the system. The vendor is responsible for filing this information on an ongoing basis.

 (D) A person or an individual who seeks approval for any type of voting system shall file with the State Election Commission copies of all contracts and maintenance agreements used in connection with the sale of the voting system. All changes to standard contracts and maintenance agreements must be filed with the State Election Commission.

 (E) A person or company who seeks approval for any voting system shall conduct, under the supervision of the State Election Commission and any county board of voter registration and elections, a field test for any new voting system, as part of the certification process. The field test must involve South Carolina voters and election officials, and must be conducted as part of a scheduled primary, general, or special election. This test must be held in two or more precincts, and all costs relating to the use of the voting system must be borne by the vendor. The test must be designed to gauge voter reaction to the system, problems that voters have with the system, and the number of units required for the efficient operation of an election. The test also must demonstrate the accuracy of votes reported on the system.

 (F) Before a voting system may be used in elections in the State, all source codes for the system must be placed in escrow by the manufacturer at the manufacturer’s expense with the authority approved by the Federal Election Assistance Commission. These source codes must be available to the State Election Commission in case the company goes out of business, pursuant to court order, or if the State Election Commission determines that an examination of these source codes is necessary. The manufacturer shall place all updates of these source codes in escrow, and notify the State Election Commission that this requirement has been met.

 (G) After a voting system is approved, an improvement or change in the system must be submitted to the State Election Commission for approval pursuant to this section. This requirement does not apply to the technical capability of a general purpose computer, reader, or printer used for election preparation or ballot tallying.

 (H) If the State Election Commission determines that a voting system that was approved no longer meets the requirements of Title 7, the commission shall decertify that system. A decertified system must not be used in an election unless it is reapproved by the commission pursuant to the provisions of Title 7.

 (I)(1) A vendor of any voting system that has been approved by the State Election Commission shall report in writing to the Director of the State Election Commission any decertification, ethical, or technical violations against the voting system in any state within ninety days after the decertification, ethical, or technical violations are issued by the other state. If the vendor does not provide evidence to the State Election Commission’s satisfaction that the voting system deficiencies have been corrected to comply with the provisions of South Carolina law, then the voting system may be decertified.

 (2) A vendor seeking the approval of a voting system by the State Election Commission shall report in writing to the Director of the State Election Commission any decertification, ethical, or technical violations issued against the voting system in any state that have occurred prior to or during the time the vendor seeks approval of the voting system by the State Election Commission. If the vendor does not provide evidence to the State Election Commission’s satisfaction that the voting system deficiencies have been corrected to comply with the provisions of South Carolina law, then the voting system may not be approved.

 (J) A member of the State Election Commission, county board of voter registration and elections, custodian, or member of a county governing body may not have a pecuniary interest in any voting system or in the manufacture or sale of any voting system.

HISTORY: 1962 Code Section 23‑402; 1952 Code Section 23‑402; 1950 (46) 2059; 1971 (57) 85; 1999 Act No. 103, Section 6, eff June 30, 1999; 2005 Act No. 63, Section 4, eff May 16, 2005.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1999 amendment rewrote the section.

The 2005 amendment rewrote this section, deleting subsection (B) and redesignating subsections (C) to (I) as subsections (B) to (H) and adding a new subsection (I).

**SECTION 7‑13‑1630.** Repealed by 1999 Act No. 103, Section 8, eff June 30, 1999.

Editor’s Note

Former Section 7‑13‑1630 was entitled “Employment of experts to assist in examination” and was derived from 1962 Code Section 23‑403; 1952 Code Section 23‑403; 1950 (46) 2059.

**SECTION 7‑13‑1640.** Voting machine requirements.

 (A) Any kind or type of voting machine may be approved by the State Board of Voting Machine Commissioners which is so constructed as to fulfill the following requirements. It shall:

 (1) provide facilities for voting for all candidates of as many political parties or organizations as may make nominations of candidates at any election, for or against as many questions as may be submitted at any election, and at all general or special elections, permit the voter to vote for all of the candidates of one party or in part for the candidates of one or more parties;

 (2) permit the voter to vote for as many persons for any office as he is lawfully entitled to vote for, but no more;

 (3) prevent the voter from voting for the same person more than once for the same office;

 (4) permit the voter to vote for or against any question he may have the right to vote on, but no other;

 (5) if used at a primary election, be so equipped that all rows except those of the voter’s party can be locked out by the managers of election by means of an adjustment on the outside of the machine;

 (6) correctly register or record and accurately count all votes cast for any and all candidates and for or against all questions;

 (7) be provided with a “protective counter” or “protective device” whereby any operation of the machine before or after the election will be detected;

 (8) be provided with a counter which shows at all times during an election how many persons have voted;

 (9) be provided with either an illustration or a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters; and

 (10) ensure voting in absolute secrecy.

 (B) A machine must be provided with a device for each party and for each nomination by petition for voting for presidential and vice‑presidential candidates in one operation and listing the candidates by name and by party or indicating the candidate is nominated by petition.

 (C) If approved after July 1, 1999, or if an upgrade in software, hardware, or firmware is submitted for approval as required by Section 7‑13‑1620(B), the voting system must be able to electronically transmit vote totals for all elections to the State Election Commission in a format and time frame specified by the commission.

HISTORY: 1962 Code Section 23‑404; 1952 Code Section 23‑404; 1950 (46) 2059; 1982 Act No. 419, Section 3, eff June 8, 1982; 1996 Act No. 316, Section 1, eff May 20, 1996; 1999 Act No. 103, Section 7, eff June 30, 1999.

Effect of Amendment

The 1982 amendment rewrote the last paragraph as it appears in the parent volume, and substituted a new paragraph.

The 1996 amendment revised this section to provide that the state board of voting machine commissioners be provided with either an illustration or a mechanical model which illustrates the manner of voting on the machine.

The 1999 amendment added subsection (C).

LIBRARY REFERENCES

29 C.J.S., Elections Section 156.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 68, Methods of Voting‑ Electronic.

Attorney General’s Opinions

Under 1962 Code Section 23‑400.26 [1976 Code Section 7‑13‑440], voting machines must be constructed to allow a voter to vote for all candidates of one party at any level of government. 1975‑76 Op Atty Gen, No. 4464, p 326.

Separate paper ballots for constitutional amendments. It was the intent of the legislature that separate paper ballots should be used for constitutional amendments where it is impossible to place the amendments on the machine themselves due to space requirements. 1967‑68 Op Atty Gen, No. 2503, p 183.

Constitutional amendments cannot be placed on a voting machine by numbers. 1967‑68 Op Atty Gen, No. 2503, p 183.

**SECTION 7‑13‑1650.** Experimental use of voting machines.

 The governing body of any county, city or town may provide for the experimental use at an election in one or more districts or precincts of a machine which it might legally adopt without a formal adoption thereof, and its use at such election shall be as valid for all purposes as if it had been legally adopted.

HISTORY: 1962 Code Section 23‑405; 1952 Code Section 23‑405; 1950 (46) 2059.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 153, 203.

**SECTION 7‑13‑1655.** “Voting system” defined; State Election Commission duties.

 (A) As used in this section, “voting system” means:

 (1) the total combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment that is used to:

 (a) define ballots;

 (b) cast and count votes;

 (c) report or display election results; and

 (d) maintain and produce audit trail information;

 (2) the practices and associated documentation used to:

 (a) identify system components and versions of these components;

 (b) test the system during its development and maintenance;

 (c) maintain records of system errors and defects;

 (d) determine specific system changes to be made to a system after the initial qualification of the system; and

 (e) make available materials to the voter, such as notices, instructions, forms, or paper ballots.

 (B) The State Election Commission shall:

 (1) either approve and adopt one voting system to be used by authorities charged by law with conducting elections, or approve and adopt multiple voting systems if the commission, in its discretion, determines not to adopt one voting system;

 (2) support the authorities charged by law with conducting elections by providing basic level training for personnel in the operation of the voting system approved and adopted by the commission;

 (3) support all aspects of creating the ballots and the database of the voting system that is approved and adopted; and

 (4) comply with the provisions of Chapter 35 of Title 11 in procuring a voting system or systems, as defined in subsection (A).

HISTORY: 2005 Act No. 63, Section 1, eff May 16, 2005.

**SECTION 7‑13‑1660.** Repealed by 2005 Act No. 63, Section 5, eff May 16, 2005.

Editor’s Note

Former Section 7‑13‑1660 was entitled “Acquisition and use of approved voting machines by governing bodies” and was derived from 1962 Code Section 23‑406; 1952 Code 23‑406; 1950 (46) 2059.

**SECTION 7‑13‑1670.** Demonstrations with machines for instruction of voters.

 In any county, city or town in which voting machines are to be used, the board of voter registration and elections or other electoral board may designate suitable and adequate times and places for the exhibition and demonstration of a voting machine containing sample ballots, showing the title of offices to be filled and, so far as practicable, the names of the candidates to be voted for at the next election for the purpose of giving instruction as to the use of a voting machine to all voters who may apply for it. No voting machine shall be used for such instruction after being prepared and sealed for use in an election. During such exhibition the counting mechanism of the voting machine shall be concealed from view.

HISTORY: 1962 Code Section 23‑407; 1952 Code Section 23‑407; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑1680.** Number of voting machines; type and use; repair; custody.

 The governing body of any county or municipality providing voting machines at polling places for use at elections shall provide for each polling place at least one voting machine for each two hundred fifty registered voters or portion thereof or as near thereto as may be practicable. The machines shall be of the type approved as provided for in this title and shall be kept in complete and accurate working order and in proper repair. The machines may be used in such election districts or precincts in the county or municipality as the officials holding the election or conducting the primary may determine. The governing body of the county or municipality owning the machines shall have custody of such machines and other furniture or equipment of the polling places when not in use at an election.

HISTORY: 1962 Code Section 23‑408; 1952 Code Section 23‑408; 1950 (46) 2059; 1968 (55) 2316; 2000 Act No. 392, Section 5, eff August 1, 2000.

Effect of Amendment

The 2000 amendment in the first sentence substituted “two hundred fifty” for “three hundred and fifty” and made nonsubstantive changes throughout.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 155, 203.

Attorney General’s Opinions

Section requiring one voting machine for each 350 registered voters applies to voting precincts and not the general area in which the election is held. 1967‑68 Op Atty Gen, No. 2490, p 162.

Number of voting machines discretionary. A governing body of a county has discretion in determining the number of voting machines to be placed at a polling place. 1967‑68 Op Atty Gen, No. 2503, p 183.

Failure to follow strictly the assignment of voting machines does not invalidate an election. 1967‑68 Op Atty Gen, No. 2453, p 114.

**SECTION 7‑13‑1690.** Employment and qualifications of custodians of voting machines.

 For the purpose of placing ballots in the frames of a machine, putting it in order and setting, testing, adjusting and delivering the machine, the board of voter registration and elections or other electoral board may employ one or more competent persons, to be known as the custodians of voting machines, who shall be fully competent, thoroughly instructed and sworn to perform their duties honestly and faithfully. For such purpose such persons shall be appointed and instructed at least thirty days before the election and shall be considered as election officers.

HISTORY: 1962 Code Section 23‑409; 1952 Code Section 23‑409; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑1700.** Instruction of managers and clerks in use of machines; appointment of manager or clerk in emergency.

 Not more than thirty days before each primary or general election, the board of voter registration and elections or other electoral board must instruct the managers and clerks appointed to serve in the election in the use of the machine and their duties in connection therewith; and the board of voter registration and elections shall not permit a person to serve as a manager or clerk, if there are clerks, who is not fully qualified to conduct an election with the machine. However, nothing in this section may be construed to prevent the appointment of a person as a manager or clerk of election to fill a vacancy in an emergency.

HISTORY: 1962 Code Section 23‑410; 1952 Code Section 23‑410; 1950 (46) 2059; 1996 Act No. 434, Section 13, eff June 4, 1996.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1996 amendment substituted “more than thirty days” for “less than ten nor more than twenty‑one days”, inserted “primary or general” preceding “election, the commissioners”, substituted “must instruct the managers and clerks appointed to serve in the election in the use” for “shall instruct or cause to be instructed in the use”, substituted “therewith; and the commissioners shall not permit a person” for “therewith the managers and clerks, if clerks be appointed, appointed to serve in such election, and they shall not permit any person”, deleted “properly” following “who is not fully qualified”, substituted “However, nothing in this section may be” for “But nothing herein shall be”, deleted “, if there be clerks,” preceding “of election to fill”, and made nonsubstantive changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 51, Qualifications.

**SECTION 7‑13‑1710.** Voting machine ballots; arrangement of nominations.

 In every county, city or town providing voting machines, the board of voter registration and elections shall furnish to the managers of election a sufficient number of ballots printed on clear white paper, of such form and size as will fit the ballot frames of the machines, the arrangement of the names of the candidates on such ballots to be prescribed by the board of voter registration and elections. Party nominations shall be arranged on each voting machine either in columns or horizontal rows, as shall nominations by petition, and the captions of the various ballots on such machines shall be so placed as to indicate to the voter what push knob, key lever or other device is to be used or operated in order to vote for the candidate or candidates of his choice.

HISTORY: 1962 Code Section 23‑411; 1952 Code Section 23‑411; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 156, 158, 159.

**SECTION 7‑13‑1720.** Unopposed candidates in primaries.

 In any party primary in which voting machines shall be used in one or more voting precincts, the name of any unopposed candidate for nomination for any office shall be omitted from the ballot used in any such voting machine, and such unopposed candidate shall be declared to have received the total number of votes cast in such voting precinct.

HISTORY: 1962 Code Section 23‑412; 1952 Code Section 23‑412; 1950 (46) 2059.

**SECTION 7‑13‑1730.** Use of separate ballots on constitutional amendments and other public measures.

 Nothing in this article shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures.

HISTORY: 1962 Code Section 23‑413; 1952 Code Section 23‑413; 1950 (46) 2059.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

Attorney General’s Opinions

Separate paper ballots for constitutional amendments. It was the intent of the legislature that separate paper ballots should be used for constitutional amendments where it is impossible to place the amendments on the machine themselves due to space requirements. 1967‑68 Op Atty Gen, No. 2503, p 183.

Constitutional amendments cannot be placed on a voting machine by numbers. 1967‑68 Op Atty Gen, No. 2503, p 183.

**SECTION 7‑13‑1740.** Sample or instruction ballots.

 The board of voter registration and elections or other electoral board of any county, city or town in which voting machines are used shall provide for each voting precinct in which such machines are used two sample ballots or instruction ballots, which shall be arranged in the form of a diagram of the entire front of the voting machine as it will appear after the official ballots are arranged therein or thereon for voting on election day. Such sample ballots shall be open to public inspection at such polling place during the day of election.

HISTORY: 1962 Code Section 23‑414; 1952 Code Section 23‑414; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑1750.** Preparation of machines for elections; party representatives may examine machines.

 Before preparing a voting machine for an election at which candidates for more than one political party or candidates nominated by petition are to be voted for, written notice must be mailed to the chairman of the local committee of each of the political parties that have certified candidates, stating the time and place where the machines will be prepared. At this time, one representative of each of these political parties must be afforded an opportunity to see that the machines are in proper condition for use at the election. When a machine has been examined by these representatives, it must be locked or sealed with a numbered seal in their presence. The representatives must certify as to the numbers of the machines, that all counters are set at zero (000), as to the number registered on the protective counter, and the number on the seal. When a voting machine has been properly prepared for an election, it must be locked or sealed against voting, and any necessary seals or keys to the machine retained in the custody of the board of voter registration and elections or other electoral board and delivered to the managers of election as provided in this chapter.

HISTORY: 1962 Code Section 23‑415; 1952 Code Section 23‑415; 1950 (46) 2059; 1996 Act No. 434, Section 14, eff June 4, 1996; 2000 Act No. 392, Section 6, eff August 1, 2000.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1996 amendment substituted “must” for “shall” throughout this section, replaced “such” with “this” in the second sentence and with “these” in the third sentence, substituted “of these political parties” for “such political party” in the second sentence, in the third sentence deleted “metal” following “a numbered”, in the fourth sentence substituted “The” for “Such”, in the fifth sentence substituted “, sealed, and the keys to the machine” for “and sealed and the keys thereof shall be” and substituted “as provided in this chapter” for “as herein provided”, and made other nonsubstantive changes.

The 2000 amendment in the first sentence deleted “two” before “political parties” and substituted “that have certified candidates” and “which at the general election next preceding cast the highest and next highest number of votes”, in the third sentence added “locked or”, and in the fifth sentence added “or sealed” before “against” and “any necessary seals or” before “keys” and deleted “sealed,” following “voting,”.

**SECTION 7‑13‑1760.** The boards of voter registration and elections shall see that machines and other equipment are in place and good order.

 The board of voter registration and elections or other electoral board, as the case may be, shall have the voting machines and all necessary furniture and equipment at the polling places before the time fixed for the opening of the polls, have the counters on the machines set at zero (000) and otherwise have the machines in good and proper order for use at such election.

HISTORY: 1962 Code Section 23‑416; 1952 Code Section 23‑416; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑1770.** Duties of managers prior to opening polls; when machines may not be used for voting purposes.

 The managers of each election precinct at which a voting machine is to be used shall meet at the voting place at least forty‑five minutes before the time set for the opening of the polls at each election and shall proceed to arrange within the guard rail the furniture, supplies, and voting machine or machines for the conduct of the election. At that time, the managers shall post at least two instruction cards conspicuously within the polling place. If not previously done, they shall arrange, in their proper place on or in the voting machine, the ballots prepared for such election. A sealed envelope shall be delivered to the managers of election at least thirty minutes before the time set for the opening of the polls on which shall be written or printed the number of the voting machine, the number of any respective seals, and the number registered on the protective counter device. This envelope shall not be opened until all of the managers of election for the precinct are present at the polling place and have examined the envelope to see that it has not been opened. The machines, upon preparation for voting by the managers, shall not be operated except by voters in voting. Before opening the polls, each manager shall examine the machines and see that no vote has been cast and that the counters register zero (000). If any counter is found not to register zero (000), the managers shall not use the machine for voting purposes and notify the board of voter registration and elections.

HISTORY: 1962 Code Section 23‑417; 1952 Code Section 23‑417; 1950 (46) 2059; 2000 Act No. 392, Section 7, eff August 1, 2000.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 2000 amendment rewrote this section.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 52, Setting Up Polling Area.

**SECTION 7‑13‑1780.** Placement of voting machines in polling places.

 At all elections at which voting machines are used the exterior of the voting machine and every part of the polling place shall be in plain view of the managers and clerks, if there be clerks of election. The voting machine shall be placed at least three feet from every wall or partition of the polling place and at least five feet from any table at which any of the election managers or clerks, if there be clerks, may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the managers of the election when not in use by voters. The managers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to see or ascertain how a voter votes or how he has voted.

HISTORY: 1962 Code Section 23‑418; 1952 Code Section 23‑418; 1950 (46) 2059.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 52, Setting Up Polling Area.

**SECTION 7‑13‑1790.** Lights and screens.

 Every voting machine shall be furnished with a lantern or other proper light, if necessary, to enable the voters while voting to read the ballots. All voting machines used in any election shall be provided with screen, hood or booth which shall conceal the voter and his action while voting.

HISTORY: 1962 Code Section 23‑419; 1952 Code Section 23‑419; 1950 (46) 2059.

**SECTION 7‑13‑1800.** Inspection of machines; covering of counter compartment shall be kept locked; attendance at voting places.

 One of the managers of election may inspect the face of the machine after each voter has cast his vote, to see that the ballots on the face of the machine are in their proper places and that the machine has not been injured. During an election the door or other covering of the counter compartment of the machine shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the managers of election and attached to the returns of election. No person shall be permitted in or about the voting place except as otherwise provided by law in elections in which paper ballots and ballot boxes are used.

HISTORY: 1962 Code Section 23‑420; 1952 Code Section 23‑420; 1950 (46) 2059.

**SECTION 7‑13‑1810.** Instructions of voters by model machine at polling place.

 For the instruction of voters on any election day, there shall be provided for each polling place either an illustration or a mechanically operated model of a portion of the face of the machine. The illustration or model shall be located on the table of one of the managers or in some other place accessible to the voters. Each voter so desiring shall, before entering the machine, be instructed regarding its operation on either the illustration or the model and the voter given an opportunity personally to operate the model. The voter’s attention may also be called to the diagram of the face of the machine so that the voter may become familiar with the location of the questions and names of the offices and candidates.

HISTORY: 1962 Code Section 23‑421; 1952 Code Section 23‑421; 1950 (46) 2059; 1996 Act No. 316, Section 2, eff May 20, 1996.

Effect of Amendment

The 1996 amendment revised this section relating to the requirement that there must be provided on election day a mechanically operated model of a voting machine for instruction of voters, so as to authorize an illustration or mechanically operated model be provided for the instruction of voters.

**SECTION 7‑13‑1820.** Persons within guard rail; time permitted voters to vote.

 After the opening of the polls, the managers of election shall not permit any voter or other person to pass within the guard rail until they ascertain that he or she is entitled to vote, in the manner required by Section 7‑13‑710, as the case may be, and only one voter at a time for each voting machine at the voting place shall be permitted to pass within or be within the guard rail to vote. No voter shall remain within the voting machine booth longer than three minutes, and if he shall refuse to leave it after the lapse of three minutes, he may be removed by the managers.

HISTORY: 1962 Code Section 23‑422; 1952 Code Section 23‑422; 1950 (46) 2059.

**SECTION 7‑13‑1830.** Instruction after voter has entered machine.

 In case any voter, after entering the voting machine, shall ask for further instructions concerning the manner of voting, two of the managers shall give such instructions to him, but no manager or other election officer shall in any manner request or seek to persuade or induce any such voter to vote any particular ticket or for or against any particular candidate or for or against any particular amendment, question or proposition. After giving such instructions the managers shall, before the voter has voted, retire and such voter shall cast his ballot in secret.

HISTORY: 1962 Code Section 23‑423; 1952 Code Section 23‑423; 1950 (46) 2059.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Berry v. Spigner (S.C. 1954) 226 S.C. 183, 84 S.E.2d 381.

**SECTION 7‑13‑1840.** Assistance may be given to voters.

 The provisions of this Title relating to the assistance to be given to voters shall also apply where voting machines are used.

HISTORY: 1962 Code Section 23‑424; 1952 Code Section 23‑424; 1950 (46) 2059.

**SECTION 7‑13‑1850.** Write‑in ballots.

 Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office are herein referred to as “write‑in ballots.” All write‑in ballots voted shall be deposited, written or affixed in a single receptacle or device, and the elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. A write‑in ballot must be cast in its appropriate place on the machine or it shall be void and not counted.

HISTORY: 1962 Code Section 23‑425; 1952 Code Section 23‑425; 1950 (46) 2059.

LIBRARY REFERENCES

29 C.J.S., Elections Section 180.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 61, Assistance to Voters‑ Write‑In Vote and Write‑In Absentee Ballot.

Attorney General’s Opinions

Voter may write in name of candidate whose name is printed on machine. A voter desiring to vote by write‑in on a voting machine may cast a ballot for a candidate whose name is printed on the machine by writing in the name of such candidate. 1963‑64 Op Atty Gen, No. 1725, p 206.

**SECTION 7‑13‑1860.** Duty to protect machines against injury.

 After the voting machines have been delivered to the polling places, it shall be the duty of the board of voter registration and elections or other electoral board to provide ample protection against molestation or injury to the machines.

HISTORY: 1962 Code Section 23‑426; 1952 Code Section 23‑426; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

**SECTION 7‑13‑1870.** Procedure when voting machine becomes inoperative.

 In case any voting machine used in any election district shall, during the time the polls are open, become injured so as to render it inoperative in whole or in part, the managers shall give immediate notice thereof to the board of voter registration and elections or other electoral board, and such board of voter registration and elections or other electoral board shall, if possible, substitute a machine in good order for the injured machine, and at the close of the polls the record of both machines shall be taken and the votes shown on their counters shall be added together in ascertaining the results of the election. If no other machine is available for use at such election and the injured one cannot be repaired in time to continue use thereof at such election, unofficial ballots made as nearly as possible in the form of the official ballots may be used, received by the managers of election, placed in a receptacle in such case to be provided by the election officials and counted with the votes registered on the voting machine, and the result shall be declared as though there had been no accident to the voting machine. The ballots thus voted shall be preserved and returned with the statement of canvass with a certificate setting forth how and why they were voted.

HISTORY: 1962 Code Section 23‑427; 1952 Code Section 23‑427; 1950 (46) 2059.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

CROSS REFERENCES

Use of ballots provided under this section and Section 7‑13‑1470, for elderly or handicapped voters who cannot enter the polling place, see Section 7‑13‑771.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 65, Methods of Voting‑ Paper.

**SECTION 7‑13‑1880.** Canvass and return of vote; return of provisional and failsafe ballots.

 As soon as the polls of election are closed, the managers shall immediately lock or seal the voting machine against further voting and open the counter compartment in the presence of all persons who may be lawfully present at the time giving full view to the results, and they shall canvass and announce the results, including the votes recorded for each office on the independent ballots. They shall also announce the vote upon every amendment, proposition, or question voted upon, as provided by Section 7‑13‑110. The vote as registered shall be duly certified and sworn to and returned and filed as provided in this title for returning and filing election returns. No tally sheets or return blanks, as required by law for use in voting precincts in which paper ballots are used, need be furnished or used when voting machines are used, and no ballots need to be returned with the machine results except the provisional and failsafe ballots.

HISTORY: 1962 Code Section 23‑428; 1952 Code Section 23‑428; 1950 (46) 2059; 2000 Act No. 392, Section 8, eff August 1, 2000.

Effect of Amendment

The 2000 amendment rewrote this section.

LIBRARY REFERENCES

29 C.J.S., Elections Section 230.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 66, Methods of Voting‑ Voting Machine.

S.C. Jur. Elections Section 78, Accounting for Ballots.

**SECTION 7‑13‑1890.** Machines shall remain locked after election; certification of managers or election; verification of results of election.

 A sealed envelope having endorsed thereon a certificate of the managers of election stating the number of the machine, the voting precinct, the numbers on the seals, and the number on the protective counter and containing all used seals for this election shall be returned and delivered by one of the managers of the election to the board of voter registration and elections or other electoral board from whom the envelope was received. After being locked or sealed by the managers of election, the voting machines shall remain locked or sealed for as long as may be necessary or advisable because of any contest of the result of the election, except as may be necessary to prepare the machines for another election and except that they may be opened and all data examined by the authority responsible for conducting the election in order to ascertain or verify the machine results of the election; however, this examination may be conducted only if all candidates in an affected race, or their representatives, are notified and given an opportunity to be present, or upon the order of a court of competent jurisdiction.

HISTORY: 1962 Code Section 23‑429; 1952 Code Section 23‑429; 1950 (46) 2059; 2000 Act No. 392, Section 9, eff August 1, 2000.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 2000 amendment rewrote this section.

NOTES OF DECISIONS

In general 1

1. In general

Reinstatement of original results in school board election was not permissible remedy for State Election Commission data coordinator’s failure to comply with statutory requirements when unsealing voting machines to do total machine retrieval in response to election protest; only evidence in record indicated that original election results were incorrectly tabulated. In re Bamberg Ehrhardt School Bd. Election (Dist. 1, Seat 2) held April 13, 1999 (S.C. 1999) 337 S.C. 561, 524 S.E.2d 400. Education 87(1); Public Employment 71

State Election Commission’s failure to get court order before its data coordinator opened voting machines to conduct recount in response to school board election protest did not require Commission to invalidate election, rather than remand for new total machine retrieval upon obtaining court order; there was no evidence that recount contaminated actual election results, which remained in machines, and there was no fraud, no constitutional violation, and no specific statutory remedy requiring that election be invalidated. In re Bamberg Ehrhardt School Bd. Election (Dist. 1, Seat 2) held April 13, 1999 (S.C. 1999) 337 S.C. 561, 524 S.E.2d 400. Education 87(1); Education 87(7); Public Employment 69; Public Employment 71

**SECTION 7‑13‑1900.** Use of voting machines for primary elections.

 If in any county, city or town voting machines shall have been provided under the provisions of this article for use at general and special elections, such machines shall be used at primary elections in such county, city or town. When so used all provisions of this article applying to their use at general or special elections shall apply, so far as applicable, to the use of such voting machines at such primary elections.

HISTORY: 1962 Code Section 23‑430; 1952 Code Section 23‑430; 1950 (46) 2059.

LIBRARY REFERENCES

29 C.J.S., Elections Section 118(1).

**SECTION 7‑13‑1910.** Possession of voting machine key by unauthorized person.

 Any unauthorized person found in possession of any voting machine key shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty‑five nor more than five hundred dollars and imprisoned in jail not less than ten nor more than ninety days, or both so fined and imprisoned, in the discretion of the court.

HISTORY: 1962 Code Section 23‑432; 1952 Code Section 23‑432; 1950 (46) 2059.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 94, Statutory Provisions.

**SECTION 7‑13‑1920.** Tampering with voting machine.

 Any person who wilfully tampers with or attempts to tamper with, disarrange, deface or impair, in any manner whatsoever, or destroy any such voting machine while it is in use at any election or who shall, after such machine is locked in order to preserve the registration or record of any election made by it, tamper with or attempt to tamper with such machine or who instigates, aids or abets any other person in any case herein mentioned, with intent to destroy or change the record of votes on a voting machine, shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned for not less than three months nor more than three years.

HISTORY: 1962 Code Section 23‑433; 1952 Code Section 23‑433; 1950 (46) 2059; 1960 (51) 1602.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 94, Statutory Provisions.

NOTES OF DECISIONS

In general 1

1. In general

State Election Commission was not required to invalidate school board election, rather than conduct total machine retrieval, despite alleged lack of compliance with statute providing that any person who tampers with locked voting machine “with the intent to destroy or change the record of votes” shall be guilty of a misdemeanor; although Commission directed data coordinator to open voting machines in response to election protest, there was no evidence that he opened machines with any intent to change or destroy record of votes. In re Bamberg Ehrhardt School Bd. Election (Dist. 1, Seat 2) held April 13, 1999 (S.C. 1999) 337 S.C. 561, 524 S.E.2d 400. Education 87(1); Public Employment 69

**SECTION 7‑13‑1930.** Other provisions of this Title applicable to use of voting machines.

 All of the provisions of this Title not inconsistent with the provisions of this article shall apply with full force and effect to elections in counties, cities and towns adopting and using voting machines.

HISTORY: 1962 Code Section 23‑431; 1952 Code Section 23‑431; 1950 (46) 2059.

ARTICLE 17

Explanation of Proposed Constitutional Amendments

**SECTION 7‑13‑2110.** Authorization of simplified or more detailed explanation of proposed constitutional amendments.

 In addition to all other requirements of law and the Constitution of this State, when any proposed amendment to the Constitution is submitted to the electorate for approval or disapproval in the general election and the proposed amendment is of such nature that it might not be clearly understood by the voters, a simplified or, when appropriate, more detailed explanation of the meaning and effect of such amendment shall be placed upon the ballot along with the proposed amendment question. When mechanical devices for voting are used, printed copies of such explanation shall be made available at each voting precinct. The provisions of this section shall apply only to statewide amendments.

HISTORY: 1975 (59) 246.

CROSS REFERENCES

Amendments and revision of the South Carolina Constitution, see SC Const, Art 16.

**SECTION 7‑13‑2120.** Constitutional Ballot Commission.

 To establish an agency to determine whether or not a proposed constitutional amendment requires a simplified or more detailed explanation as provided for in Section 7‑13‑2110, there is hereby created the Constitutional Ballot Commission composed of the Attorney General, the Director of the State Election Commission and the Director of the Legislative Council. Prior to the printing of ballots in each general election year in which proposed constitutional amendments are voted upon, the Commission shall meet at the call of the Attorney General and:

 (1) Consider each proposed amendment and make a determination as to whether or not a simplified or more detailed explanation is necessary or appropriate; and

 (2) In those cases where it is determined that an explanation is deemed necessary or appropriate, phrase such explanation and submit it to the State Election Commission under the signatures of at least a majority of the ballot commissioners. The Election Commission shall arrange for the placement of amendment explanations on ballots and make them available to the news media, upon request, at least ten days prior to the general election.

HISTORY: 1975 (59) 246.

**SECTION 7‑13‑2130.** Jurisdiction of proceedings challenging explanations.

 The State Supreme Court shall have exclusive and original jurisdiction in any proceeding challenging the amendment explanations prepared by the Ballot Commission.

HISTORY: 1975 (59) 246.

CROSS REFERENCES

Actions based on simplified explanation of referendum supplied by electoral board, see Section 7‑1‑100.

NOTES OF DECISIONS

In general 1

1. In general

The Supreme Court had original jurisdiction over an election dispute, even though the language of the complaint related to the form of the ballot as it appeared in the proposing resolution, where it was clear that the court’s determination would depend not merely upon the language of the question employed by the General Assembly, but also upon the “simplified explanation” as well. Taylor v. Roche (S.C. 1978) 271 S.C. 505, 248 S.E.2d 580.

ARTICLE 19

General, Special, and Primary Elections Resulting in a Tie

**SECTION 7‑13‑2210.** General or special election.

 If any general election or special election, other than a nonpartisan municipal election, results in a tie vote and no candidate withdraws, the election officials who conducted the tie election shall conduct a runoff election to break the tie two weeks following the tie election. In the tie‑breaking runoff, the laws of this State apply, mutatis mutandi. If the date for the tie‑breaking runoff falls on a legal holiday, it must be held on the same day of the first week following which is not a legal holiday.

HISTORY: 1988 Act No. 364, Section 2, eff March 14, 1988.

**SECTION 7‑13‑2220.** Primary election.

 If any primary election, other than a nonpartisan municipal primary election, results in a tie vote and no candidate withdraws, the party officials shall conduct a runoff election to break the tie two weeks following that election. In the tie‑breaking election, the laws of this State apply, mutatis mutandi. If the date for the tie‑breaking runoff election falls on a legal holiday, it must be held on the same day of the first week following which is not a legal holiday. If a tie‑breaking runoff election is required, any remaining primary elections required are postponed for two weeks. If the date for a postponed election falls on a legal holiday, it must be set for the same day of the first week following which is not a legal holiday.

HISTORY: 1988 Act No. 364, Section 2, eff March 14, 1988.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 42, Date.