CHAPTER 17

Canvass of Votes; Certificates and Records of Results

ARTICLE 1

County Boards of Canvassers

**SECTION 7‑17‑10.** Meeting and organization of county boards of canvassers.

 The commissioners of election for Governor, Lieutenant Governor, state officers, circuit solicitors, members of the General Assembly, and county officers or any of these officers shall meet in some convenient place at the county seat on the Friday next following the election, before one o’clock in the afternoon of that day, and shall proceed to organize as the county board of canvassers. They may appoint some competent person as secretary. The chairman shall then proceed to administer the constitutional oath to each member of the board, as canvassers, and shall administer the constitutional oath to the secretary, and the secretary shall administer to the chairman the same oath that he has administered to the other members of the board. The commissioners of election for members of Congress and presidential electors or any of these officers shall likewise meet at the same time at the county seat and shall in the same manner proceed to organize as the county board of canvassers for the election of the federal officers.

HISTORY: 1962 Code Section 23‑451; 1952 Code Section 23‑451; 1942 Code Section 2310; 1932 Code Section 2310; Civ. C. ‘22 Section 244; Civ. C. ‘12 Section 242; Civ. C. ‘02 Section 216; G. S. 220; R. S. 174; 1882 (17) 1119; 1968 (55) 2316; 2002 Act No. 261, Section 1, eff May 20, 2002.

Effect of Amendment

The 2002 amendment, in the first sentence, substituted “these” for “such” and “Friday” for “Thursday”, and deleted “and shall be” preceding “the county board”; in the third sentence, substituted “has” for “shall have”; in the fourth sentence, substituted “these” for “such” and “the same” for “like”, deleted “and shall be” preceding “the county board”, and “aforesaid” following “officers”.

CROSS REFERENCES

State Board of Canvassers, see Sections 7‑17‑210 et seq.

LIBRARY REFERENCES

29 C.J.S., Elections Section 236.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 82, General Elections.

Attorney General’s Opinions

Annexation elections. Of this chapter, only this section [Code 1962 Section 23‑451] and Code 1962 Sections 23‑452 and 23‑453 are applicable to annexation elections. 1963‑64 Op Atty Gen, No. 1615, p 32.

NOTES OF DECISIONS

In general 1

1. In general

Furnishing ballots not provided in article. There is nothing in this article authorizing or requiring anyone to print, provide, or furnish ballots for any general election. Gardner v. Blackwell (S.C. 1932) 167 S.C. 313, 166 S.E. 338.

Cited in Smith v. Saye (S.C. 1924) 130 S.C. 20, 125 S.E. 269.

For additional related cases, see State v Board of Canvassers, 78 SC 461, 59 SE 145 (1907). State v State Board of Canvassers, 79 SC 246, 60 SE 699 (1908). State v. Jennings (S.C. 1908) 79 S.C. 414, 60 S.E. 967.

This article governs the election for new counties. State v Moore, 54 SC 556, 32 SE 700 (1899). Segars v. Parrott (S.C. 1898) 54 S.C. 1, 31 S.E. 677.

**SECTION 7‑17‑20.** Canvass of votes.

 The county board of canvassers, respectively, shall then proceed to canvass the votes of the county and make such statements of such votes as the nature of the election shall require no later than noon on the Saturday next following the election and at such time shall transmit to the State Board of Canvassers the results of their findings.

HISTORY: 1962 Code Section 23‑452; 1952 Code Section 23‑452; 1942 Code Section 2311; 1932 Code Section 2311; Civ. C. ‘22 Section 245; Civ. C. ‘12 Section 243; Civ. C. ‘02 Section 217; G. S. 121; R. S. 175; 1882 (17) 1119, 1170, 1172 Section 3; 1968 (55) 2316.

CROSS REFERENCES

Mandatory recount in certain elections, see Section 7‑17‑280.

Provisions of Chapter 17 of Title 7 as applicable to elections to create special tax districts, determine nature of services to be rendered, and determine maximum level of taxes or user service charges, see Section 4‑9‑30.

RESEARCH REFERENCES

ALR Library

60 ALR 6th 481 , Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests.

Encyclopedias

S.C. Jur. Elections Section 13, County Board of Canvassers.

S.C. Jur. Elections Section 82, General Elections.

Attorney General’s Opinions

Annexation elections. Of this chapter, only Code 1962 Sections 23‑451 and 23‑453 and this section [Code 1962 Section 23‑452] are applicable to annexation elections. 1963‑64 Op Atty Gen, No. 1615, p 32.

NOTES OF DECISIONS

In general 1

1. In general

Time period in which challenger was required to file election contest in connection with school board election commenced running when county board of canvassers canvassed votes and transmitted them to State Election Commission, rather than when challenger saw print‑out of election results posted at polls. 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. Election Law 536

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.

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.

**SECTION 7‑17‑30.** Protests and contests.

 The county boards shall decide all cases under protest or contest that arise in their respective counties in the case of county officers and less than county offices, except for primaries and municipal elections. Any protest or contest must be filed in writing with the chairman of the board, together with a copy for each candidate in the race, by noon Wednesday following the day of the declaration by the board of the result of the election. However, service upon the chairman may be perfected by depositing with the county sheriff one copy of the protest, together with a copy for each candidate in the race. The sheriff must take immediate steps to deliver the copies to the chairman. The protest must contain each ground concisely stated separately. The chairman of the board must serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the board for the purposes of hearing the protest.

HISTORY: 1962 Code Section 23‑453; 1952 Code Section 23‑453; 1942 Code Section 2311; 1932 Code Section 2311; Civ. C. ‘22 Section 245; Civ. C. ‘12 Section 243; Civ. C. ‘02 Section 217; G. S. 121; R. S. 175; 1882 (17) 1119, 1170, 1172 Section 3; 1968 (55) 2316; 1974 (58) 2124; 1993 Act No. 91, Section 1, eff June 14, 1993; 1996 Act No. 434, Section 24, eff June 4, 1996.

Effect of Amendment

The 1993 amendment in the second sentence changed “Monday” to “Wednesday”, and made grammatical changes.

The 1996 amendment in the first sentence deleted “may” preceding “arise in their respective”, and inserted “, except for primaries and municipal elections”; in the third sentence substituted “However, service” for “Provided, however, that service”; and in the fourth sentence substituted “must” for “shall”.

LIBRARY REFERENCES

29 C.J.S., Elections Section 237(1).

RESEARCH REFERENCES

ALR Library

60 ALR 6th 481 , Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests.

Encyclopedias

S.C. Jur. Elections Section 13, County Board of Canvassers.

S.C. Jur. Elections Section 85, County.

S.C. Jur. Elections Section 90, Appeal.

Attorney General’s Opinions

There is no prohibition against certified winner of election covered by Title VII of the Code taking oath of office pending determination of appeal or protest. 1984 Op Atty Gen, No. 84‑134, p. 321.

Annexation elections. Of this chapter, only Code 1962 Sections 23‑451 and 23‑452 and this section [Code 1962 Section 23‑453] are applicable to annexation elections. 1963‑64 Op Atty Gen No. 1615, p 32.

NOTES OF DECISIONS

In general 1

Recusal 2

1. In general

Right of appeal from decision of board of county canvassers to the Board of State Canvassers is secured. Segars v Parrott, 54 SC 1, 31 SE 677, 865 (1898). Blake v Walker, 23 SC 517 (1885). State v Moore, 54 SC 556, 32 SE 700 (1899).

The Board acts judicially. State v Walker, 5 SC 263 (1874). State v Cockrell, 2 Rich (31 SCL) 6. State v Deliesseline, 1 McC (12 SCL) 52. State v Bruce, 3 Brev (5 SCL) 264.

And its decisions are conclusive until revised or set aside by the proper authorities. State v Bruce, 3 Brev (5 SCL) 264. State v Deliesseline, 1 McC (12 SCL) 52. State v Cockrell, 2 Rich (31 SCL) 6. State v Walker, 5 SC 263 (1874).

Declared victor in school board election failed to preserve for appellate review her claim that challenger’s protest to county board of canvassers was not timely filed, as that issue was not raised or ruled on before State Election Commission. 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(7); Public Employment 762

Although an election protest that is not timely is barred, a time bar does not raise the issue of subject matter jurisdiction and is waived by the failure to raise it. 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. Election Law 536

Time period in which challenger was required to file election contest in connection with school board election commenced running when county board of canvassers canvassed votes and transmitted them to State Election Commission, rather than when challenger saw print‑out of election results posted at polls. 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. Election Law 536

Declared victor who alleged that challenger’s protest in school board election was not timely filed bore burden of proof on that issue. 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(7); Public Employment 71

Mere irregularities that do not affect the result of an election will not be allowed to overturn it. 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. Election Law 460

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.

Issues as to the sufficiency of ballot questions for constitutional amendments are subject to the protest and appeal procedure provided in the election laws, including the time for and forum in which protests and appeals are to be brought. Taylor v. Roche (S.C. 1978) 271 S.C. 505, 248 S.E.2d 580.

Unsuccessful candidate for county office who failed to file timely protest with county board of canvassers was barred from bringing mandamus action for recount of vote. Smith v. Hendrix (S.C. 1975) 265 S.C. 417, 219 S.E.2d 312.

In the rendition of a decision the majority of a quorum is sufficient. State v. Deliesseline (S.C. 1821).

But a single member of the Board cannot act as the Board. State v. Nerland (S.C. 1876) 7 S.C. 241.

Secondary evidence may be received of lost or destroyed ballots. State v. Nerland (S.C. 1876) 7 S.C. 241.

For additional related cases, see Ex parte Whipper, 32 SC 5, 10 SE 579 (1890). State v. Chairman County Canvassers (S.C. 1873) 4 S.C. 485.

2. Recusal

Duties of State Election Commission and county election commission were ministerial, and thus, neither commission had a stake in referendum on county sales and use tax that would require commissioners to recuse themselves from reviewing election protests. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Counties 55

**SECTION 7‑17‑40.** Poll lists shall accompany ballots in protests.

 The poll list of each polling place in a general, special or primary election shall accompany the ballots, printouts or other form of voter tabulation in each proceeding in which the votes cast at such polling place are involved in a protest.

HISTORY: 1962 Code Section 23‑453.01; 1973 (58) 1859.

NOTES OF DECISIONS

In general 1

1. In general

Even though poll list was not made part of record before county board of canvassers in school board election protest based on incorrect tabulation of election results, State Election Commission was not required to invalidate election, rather than conduct total machine retrieval. 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

Where State Election Commission directed data coordinator to open voting machines in response to school board election protest, statute providing that “unauthorized person” found in possession of voting machine key shall be guilty of misdemeanor did not require Commission to invalidate election, rather than conduct total machine retrieval. 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 7‑17‑50.** Hearings on protests or contests.

 The board shall hear the protest or contest on Monday next following the deadline for filing the protest or contest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

 The protestant and each other candidate in the protested race have the right to be present at the hearing, to be represented by counsel, to examine and cross‑examine witnesses, and to produce evidence relevant to the grounds of the protest.

 The chairman of the board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest, the board shall determine all issues by majority vote and forthwith certify the results of the election.

 The board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race and the chairman of the State Board of Canvassers shall be immediately notified of the board’s decision.

 The county board must submit the written transcript of the record of the hearing on the protest to the State Board of Canvassers not later than noon Monday, following the protest hearing before the county board.

HISTORY: 1962 Code Section 23‑453.1; 1968 (55) 2316; 1993 Act No. 91, Section 2, eff June 14, 1993.

Effect of Amendment

The 1993 amendment, in the first paragraph, changed “Thursday” to “Monday next”; and added the fifth paragraph, pertaining to the county board’s submitting a written transcript of the record of the hearing.

**SECTION 7‑17‑60.** Right to and notice of appeal from decision of county board.

 The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made not later than noon Monday next following such decision by serving such notices on the chairman of the State Board. Provided, that service may be perfected by depositing at the office of the Chief of the State Law Enforcement Division a copy of the grounds of appeal. A sufficient number of copies to be served upon all candidates in the protested race shall also be delivered to the county sheriff. Such officers shall take all steps necessary to deliver the notices to the respective parties.

HISTORY: 1962 Code Section 23‑453.2; 1968 (55) 2316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 90, Appeal.

NOTES OF DECISIONS

In general 1

1. In general

Code 1962 Section 10‑2256 was inapplicable to election contest where unsuccessful candidate, seeking second recount of close vote, failed to obtain prior permission of circuit court, and failed to properly pursue statutory remedy provided by Code 1962 Sections 23‑453 and 23‑453.2. Smith v. Hendrix (S.C. 1975) 265 S.C. 417, 219 S.E.2d 312.

Unsuccessful candidate for county office who failed to file timely protest with county board of canvassers was barred from bringing mandamus action for recount of vote. Smith v. Hendrix (S.C. 1975) 265 S.C. 417, 219 S.E.2d 312.

**SECTION 7‑17‑70.** Hearing of appeals.

 Unless otherwise provided in Section 7‑3‑10(c), the state board must meet in Columbia not later than noon on Monday fourteen days following the filing of any notice perfected under Section 7‑17‑60 for the purpose of hearing appeals. The appellant and each other candidate in the protested race have the right to be present at the hearing, to be represented by counsel, and to be heard on the merits of the appeal. The state board is bound by the facts as determined by the county board. However, if in the opinion of at least two members of the state board the facts should be reviewed, then a hearing de novo must be held by the state board. In the event of a review of the facts, the state board may receive any new evidence or exhibits as it in its discretion considers necessary to determine the appeal. The state board must remain in session until all appeals have been disposed of.

HISTORY: 1962 Code Section 23‑453.3; 1968 (55) 2316; 1992 Act No. 276, Section 2, eff March 10, 1992; 1993 Act No. 91, Section 3, eff June 14, 1993; 1997 Act No. 16, Section 1, eff April 23, 1997.

Effect of Amendment

The 1992 amendment, at the beginning of the first sentence, added “Unless otherwise provided in Section 7‑3‑10(c)”.

The 1993 amendment changed the day for meeting from “Wednesday” to “Monday”.

The 1997 amendment changed the state board meeting time from “not later than noon Monday next following” to “not later than noon on Monday fourteen days following”.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

S.C. Jur. Elections Section 90, Appeal.

**SECTION 7‑17‑80.** Statements and returns.

 The boards of county canvassers shall make such statements of the votes of the precincts of each county as the nature of the election shall require, within ten days from their first meeting, and shall transmit to the Board of State Canvassers any protest and all papers relating to the election.

HISTORY: 1962 Code Section 23‑454; 1952 Code Section 23‑454; 1942 Code Section 2311; 1932 Code Section 2311; Civ. C. ‘22 Section 245; Civ. C. ‘12 Section 243; Civ. C. ‘02 Section 217; G. S. 121; R. S. 175; 1882 (17) 1119, 1170, 1172 Section 3; 1968 (55) 2787.

LIBRARY REFERENCES

29 C.J.S., Elections Section 237(4).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 13, County Board of Canvassers.

Attorney General’s Opinions

A person should not be able to take the oath of office until the Secretary of State has in his office the State Election Commission’s certification that the person is the winner of the election because winners of elections are certified by the State Election Commission, not County Election Commissions; Attorney General’s Opinion No. 84‑134 is withdrawn as erroneous. 1989 Op Atty Gen, No. 89‑12, p 35.

There is no prohibition against certified winner of election covered by Title VII of the Code taking oath of office pending determination of appeal or protest. 1984 Op Atty Gen, No. 84‑134, p. 321.

**SECTION 7‑17‑90.** Duplicate statements shall be filed with clerk of county.

 Except in the case of the election for electors for President and Vice‑President, duplicate statements shall be made and filed in the office of the clerk of the county or, if there be no such clerk duly qualified according to law, in the office of the State Election Commission.

HISTORY: 1962 Code Section 23‑455; 1952 Code Section 23‑455; 1942 Code Section 2312; 1932 Code Section 2312; Civ. C. ‘22 Section 246; Civ. C. ‘12 Section 244; Civ. C. ‘02 Section 218; G. S. 122; R. S. 176; 1882 (17) 1119, 1170, 1172 Section 3; 1971 (57) 85.

LIBRARY REFERENCES

29 C.J.S., Elections Section 237(4).

**SECTION 7‑17‑100.** Separate statements of votes given for each candidate.

 The board of county canvassers shall make separate statements of the whole number of votes given in the precincts of each county for representatives in Congress and separate statements of all other votes given for other officers. Such statements shall contain the names of the persons for whom such votes were given and the number of votes given for each, which shall be written out in words at full length.

HISTORY: 1962 Code Section 23‑456; 1952 Code Section 23‑456; 1942 Code Section 2313; 1932 Code Section 2313; Civ. C. ‘22 Section 247; Civ. C. ‘12 Section 245; Civ. C. ‘02 Section 219; G. S. 123; R. S. 177; 1882 (17) 1119, 1170, 1172 Section 3; 1968 (55) 2787.

LIBRARY REFERENCES

29 C.J.S., Elections Section 237(4).

ARTICLE 3

Board of State Canvassers; Duties of Secretary of State

**SECTION 7‑17‑210.** State Election Commission constitutes Board.

 The State Election Commission shall, ex officio, constitute the Board of State Canvassers.

HISTORY: 1962 Code Section 23‑471; 1952 Code Section 23‑471; 1942 Code Section 2318; 1932 Code Section 2318; Civ. C. ‘22 Section 252; Civ. C. ‘12 Section 250; Civ. C. ‘02 Section 224; G. S. 128; R. S. 182; 1882 (17) 1120 Section 41; 1968 (55) 2316.

CROSS REFERENCES

Board of State Canvassers being ex officio the State Board of Voting Machine Commissioners, see Section 7‑13‑1610.

Creation of the State Election Commission, see Section 7‑3‑10.

LIBRARY REFERENCES

29 C.J.S., Elections Section 236.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

NOTES OF DECISIONS

In general 1

1. In general

Furnishing ballots not provided by article. There is nothing in this section [Code 1962 Section 23‑471] and following sections authorizing or requiring anyone to print, provide, or furnish ballots for any general election. Gardner v. Blackwell (S.C. 1932) 167 S.C. 313, 166 S.E. 338.

**SECTION 7‑17‑220.** Meeting of Board; telecommunication or electronic communication; public access.

 Unless otherwise provided in Section 7‑3‑10(c), the Board of State Canvassers shall convene a meeting scheduled through the office of the Election Commission within ten days after any general election for the purpose of canvassing the vote for all officers voted for at such election, including the vote for the electors for President and Vice President, and for the purpose of canvassing the vote on all Constitutional Amendments and questions and other issues. Nothing in this section prohibits the meeting from being conducted by using telephone conference or other means of telecommunication or electronic communication. Any meeting of the Board of Canvassers as provided in this section must be accessible and without cost to the public and must comply with the notice requirements of Chapter 4, Title 30, the Freedom of Information Act.

HISTORY: 1962 Code Section 23‑473; 1952 Code Section 23‑473; 1942 Code Section 2317; 1932 Code Section 2317; Civ. C. ‘22 Section 251; Civ. C. ‘12 Section 249; Civ. C. ‘02 Section 223; G. S. 127; R. S. 181; 1882 (17) 1120; 1968 (55) 2316; 1974 (58) 2188; 1992 Act No. 276, Section 3, eff March 10, 1992; 2010 Act No. 205, Section 1, eff June 8, 2010.

Effect of Amendment

The 1992 amendment, at the beginning of the first sentence, added “Unless otherwise provided in Section 7‑3‑10(c)”.

The 2010 amendment in the first sentence, substituted “convene a meeting scheduled through” for “meet at” after “shall”, and added the second and third sentences, relating to telecommunication or electronic communication and the Freedom of Information Act.

LIBRARY REFERENCES

29 C.J.S., Elections Section 236.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

S.C. Jur. Elections Section 84, General Elections.

Attorney General’s Opinions

To permit the Board of State Canvassers to convene a meeting by way of a conference telephone call with each member at his residence rather than at the office of the Election Commission would be in contravention of Section 23‑472 [1976 Code Section 7‑17‑220], Code of Laws of South Carolina, 1962, as amended. 1976‑77 Op Atty Gen, No. 77‑175, p 137.

To permit the Board of State Canvassers to convene a meeting by way of a conference telephone call with each member at his residence rather than at the office of the Election Commission would be in contravention of Code 1962 Section 23‑472 [local law], as amended. 1974‑75 Ops Atty Gen, No. 4213, p 256.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Gardner v. Blackwell (S.C. 1932) 167 S.C. 313, 166 S.E. 338.

**SECTION 7‑17‑230.** Power to adjourn; procedure when all certified statements have not been received.

 The Board shall have power to adjourn from day to day for a term not exceeding fifteen days. In case all the certified statements for the election of electors for President and Vice‑President shall not have been received on the day set for the meeting of the Board, the Board may adjourn from day to day until the same shall have been received, not exceeding five days; and if at the expiration of four days certified copies of the statements of the county canvassers shall not have been received from any county, the Board shall proceed to canvass upon such of the statements as shall have been received.

HISTORY: 1962 Code Section 23‑474; 1952 Code Section 23‑474; 1942 Code Sections 2323, 2339; 1932 Code Sections 2323, 2339; Civ. C. ‘22 Sections 257, 272; Civ. C. ‘12 Sections 255, 269; Civ. C. ‘02 Sections 229, 242; G. S. 133, 146; R. S. 187, 200; 1882 (17) 1123.

NOTES OF DECISIONS

In general 1

1. In general

Time for presenting contests is within discretion of Board. State ex rel. Davis v. State Bd. of Canvassers (S.C. 1910) 86 S.C. 451, 68 S.E. 676.

**SECTION 7‑17‑240.** Board shall make certified statement of all votes cast.

 The Board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for and against constitutional amendments and other questions and issues and for the various officers, including electors for President and Vice‑President and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct and subscribe the same with their proper names.

HISTORY: 1962 Code Section 23‑475; 1952 Code Section 23‑475; 1942 Code Section 2320; 1932 Code Section 2320; Civ. C. ‘22 Section 254; Civ. C. ‘12 Section 252; Civ. C. ‘02 Section 226; G. S. 130; R. S. 184; 1884 (17) 1120 Section 43; 1974 (58) 2187.

CROSS REFERENCES

Board of State Canvassers to certify results of primary elections, see Section 7‑17‑510.

Board of State Canvassers to hear appeals, protests and contests of decisions of county boards of canvassers, for primary elections, see Sections 7‑17‑540 et seq.

LIBRARY REFERENCES

29 C.J.S., Elections Section 237(4).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

Attorney General’s Opinions

A person should not be able to take the oath of office until the Secretary of State has in his office the State Election Commission’s certification that the person is the winner of the election because winners of elections are certified by the State Election Commission, not County Election Commissions; Attorney General’s Opinion No. 84‑134 is withdrawn as erroneous. 1989 Op Atty Gen, No. 89‑12, p 35.

**SECTION 7‑17‑250.** Board shall declare persons elected and decide contested or protested cases; appeals.

 Upon such statements the Board shall then proceed to determine and declare what persons have been duly elected to such offices. The Board shall act in an appellate judicial capacity in all cases contested or protested that come before it on appeals from county boards of canvassers.

 Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court. Notice of appeals shall be served within ten days of the Board’s decision. Provided, however, that when a contest or protest concerns the election of a State Senator, appeals from decisions of the State Board shall be only to the Senate and when the election of a member of the House of Representatives is concerned, the appeal shall be only to the House of Representatives.

HISTORY: 1962 Code Section 23‑476; 1952 Code Section 23‑476; 1942 Code Section 2322; 1932 Code Section 2322; Civ. C. ‘22 Section 256; Civ. C. ‘12 Section 254; Civ. C. ‘02 Section 228; G. S. 132; R. S. 186; 1882 (17) 1120; 1968 (55) 2316; 1974 (58) 2182.

CROSS REFERENCES

Board of State Canvassers to certify results of primary elections, see Section 7‑17‑510.

Board of State Canvassers to hear appeals, protests and contests of decisions of county boards of canvassers, for primary elections, see Sections 7‑17‑540 et seq.

County board of canvassers, see Sections 7‑17‑10 et seq.

Provisions of Chapter 17 of Title 7 as applicable to elections to create special tax districts, determine nature of services to be rendered, and determine maximum level of taxes or user service charges, see Section 4‑9‑30.

LIBRARY REFERENCES

29 C.J.S., Elections Section 237(1).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

S.C. Jur. Elections Section 84, General Elections.

S.C. Jur. Elections Section 90, Appeal.

Attorney General’s Opinions

A person should not be able to take the oath of office until the Secretary of State has in his office the State Election Commission’s certification that the person is the winner of the election because winners of elections are certified by the State Election Commission, not County Election Commissions; Attorney General’s Opinion No. 84‑134 is withdrawn as erroneous. 1989 Op Atty Gen, No. 89‑12, p 35.

NOTES OF DECISIONS

In general 1

In election of State Senators 4

Nature and functions of board 2

Review and revision of decisions of board 3

1. In general

Elections will not be invalidated because of immaterial irregularity. State v Harmon, Chev (25 SCL) 265. Wright v. State Board of Canvassers (S.C. 1907) 76 S.C. 574, 57 S.E. 536.

Nor does title to office depend on the decision of the Board of State Canvassers where such title is not contested. Ex parte Smith (S.C. 1877) 8 S.C. 495.

When the State Board on appeal declines to act, or is equally divided on the question appealed, the decision of the county board of canvassers stands. State v. Walker (S.C. 1874) 5 S.C. 263.

2. Nature and functions of board

The Board of State Canvassers is, by the express language of this section [Code 1962 Section 23‑476], a judicial tribunal. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

It is an appellate tribunal. In the sense of the act, the Board is not an inferior court but is, in itself, an appellate tribunal. In re Whipper (S.C. 1890) 32 S.C. 5, 10 S.E. 579.

Which performs both judicial and ministerial duties. Two separate and abstract duties are set out for the State canvassers to perform, one of which is ministerial and the other judicial. If there is no appeal from the county board of canvassers, then the duty required by the Board of State Canvassers is ministerial. Ex parte Elliot, 33 SC 602, 12 SE 423 (1890). State v Hayne, 8 SC 367 (1876). Ex parte Mackey (S.C. 1881) 15 S.C. 322.

3. Review and revision of decisions of board

Unless it is to enforce a duty of Board which is purely ministerial. Ex parte Mackey, 15 SC 322 (1881). State v Jones, 83 SC 432, 65 SE 444 (1909).

Decisions are final. The decisions of the State Board of Canvassers are final and cannot be reviewed by appeal to the Supreme Court. Ex parte Riggs, 52 SC 298, 29 SE 645 (1898). Segars v Parrott, 54 SC 1, 31 SE 677, 865 (1898). Ex parte Whipper, 32 SC 5, 10 SE 579 (1890).

The scope of appellate review of State Election Commission’s order is limited to corrections of errors of law; findings of fact will not be overturned unless wholly unsupported by the evidence. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Election Law 576; Election Law 577

Supreme Court will overturn the results of an election when mandatory statutory provisions have been violated and those violations interfere with a full and fair expression of the voter’s choice. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Election Law 460

Supreme Court may deem election provisions to be mandatory even after an election, and thus capable of nullifying the results, when the provisions substantially affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election. W.J. Douan v. Charleston County Council (S.C. 2003) 357 S.C. 601, 594 S.E.2d 261, rehearing denied. Election Law 53(1); Election Law 460

Unsuccessful candidate for county office who failed to file timely protest with county board of canvassers was barred from bringing mandamus action for recount of vote. Smith v. Hendrix (S.C. 1975) 265 S.C. 417, 219 S.E.2d 312.

Unless findings of fact are wholly unsupported by evidence. The Supreme Court will not review findings of fact by the Board of State Canvassers unless such findings are wholly unsupported by the evidence. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

A decision of the Board of State Canvassers is subject to review on certiorari as to errors of law only. Redfearn v. Board of State Canvassers of S. C. (S.C. 1959) 234 S.C. 113, 107 S.E.2d 10.

But this does not include the action of the county board of canvassers. The action of the county board of canvassers may be reversed on appeal to the State Board, and the court will not issue a writ of certiorari to review their action. State v. Moore (S.C. 1899) 54 S.C. 556, 32 S.E. 700.

The General Assembly has no power either to set aside or disregard such return of the Board, and until it is set aside or annulled in some form of proceeding recognized by law, it must be regarded as showing conclusively the result of the election. Segars v. Parrott (S.C. 1898) 54 S.C. 1, 31 S.E. 677.

Remedy in cases of illegal or erroneous returns. It may be that if the return of the commissioners of elections is illegal or erroneous as a matter of law, the remedy would be by writ of certiorari as in the case of Ex parte Riggs, 52 SC 298, 29 SE 645 (1898). Segars v. Parrott (S.C. 1898) 54 S.C. 1, 31 S.E. 677.

But its decisions may be reviewed by certiorari. At the most the decisions of the Board of State Canvassers can be reviewed by the Supreme Court under a writ of certiorari issued by that court for errors of law. Ex parte Riggs (S.C. 1898) 52 S.C. 298, 29 S.E. 645.

And the action of the Board cannot be reviewed or revised by mandamus. Ex parte Scarborough (S.C. 1891) 34 S.C. 13, 12 S.E. 666.

4. In election of State Senators

Supreme Court lacked jurisdiction over appeal from Election Commission decision upholding the denial of a Senate election protest; the Senate had the constitutional authority to judge the election returns and qualifications of its own members, and the appeal should have been taken to the Senate. Stone v. Leatherman (S.C. 2001) 343 S.C. 484, 541 S.E.2d 241. Election Law 532

The power vested in the State Board of Canvassers to decide as judicial officers who, in a given case, has received the largest number of votes for the office of State Senator, is subject to the power vested in the Senate by the Constitution to judge the election returns and qualifications of its own members. Andersen v. Blackwell (S.C. 1932) 168 S.C. 137, 167 S.E. 30. States 30

Return of Board may be reviewed by the State Senate in the election of Senators. Ex parte Scarborough (S.C. 1891) 34 S.C. 13, 12 S.E. 666.

**SECTION 7‑17‑260.** Cases decided by State Board; filing and service.

 The state board shall decide all cases under protest or contest that may arise in the case of federal officers, state officers, members of the State Senate and the State House of Representatives, and offices involving more than one county. Any such protest or contest shall be filed in writing with the chairman of the board, together with a copy for each candidate in the race, not later than noon five days following the canvassing of the votes for such offices by the board; provided, however, that service upon the board may be perfected by depositing at the office of the Chief of the State Law Enforcement Division a copy of the protest, together with a copy for each candidate in the race. The chief shall take immediate steps to deliver such copies to the chairman. The protest shall contain each ground thereof concisely stated separately. The chairman of the board shall forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the board for the purposes of hearing the protest. A protest or contested case heard by the state board pursuant to Chapter 17 of Title 7 shall be considered an “administrative action” pursuant to Section 15‑36‑10.

HISTORY: 1962 Code Section 23‑476.1; 1968 (55) 2316; 1993 Act No. 91, Section 4, eff June 14, 1993; 2006 Act No. 284, Section 4, eff May 19, 2006.

Editor’s Note

2006 Act No. 284, Section 5, provides as follows:

“This act takes effect upon approval by the Governor and must not be put into practice until it receives preclearance by the United States Department of Justice.” [preclearance received September 5, 2006]

Effect of Amendment

The 1993 amendment, in the first sentence following “state officers” substituted “, members of the State Senate and the State House of Representatives, and offices” for “and officers”; in the second sentence substituted “five days following” for “of the fifth day following”; and made grammatical changes.

The 2006 amendment added the final (sixth) sentence referring to “administrative action”.

CROSS REFERENCES

Requirement that the poll lists accompany the ballots in election protests, see Section 7‑17‑40.

LIBRARY REFERENCES

29 C.J.S., Elections Section 252.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

S.C. Jur. Elections Section 86, State.

**SECTION 7‑17‑270.** Hearing of protest or contest; procedure at hearing; notice of decision; appeals.

 The board, acting in a judicial capacity, shall hear the protest or contest not earlier than the fifth nor later than the twenty‑fifth day following receipt of the protest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

 The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross‑examine witnesses, and to produce evidence relevant to the grounds of the protest. The chairman of the board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest, the board shall determine all issues by majority vote and forthwith certify the results of the election.

 The board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the board’s decisions.

 Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court.

HISTORY: 1962 Code Section 23‑476.2; 1968 (55) 2316; 1974 (58) 2197; 1993 Act No. 91, Section 5, eff June 14, 1993.

Effect of Amendment

The 1993 amendment in the first paragraph substituted “twenty‑fifth day” for “tenth day”; and made grammatical changes.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 254 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 86, State.

S.C. Jur. Elections Section 90, Appeal.

NOTES OF DECISIONS

In general 1

1. In general

Constitutional provision giving to the Senate the authority to judge the election returns and qualifications of its own members and statute providing for appeal concerning Senate elections to the Senate itself are not superseded by the more general statute providing for appeals from the Election Commission to the Supreme Court on writ of certiorari. Stone v. Leatherman (S.C. 2001) 343 S.C. 484, 541 S.E.2d 241. Election Law 532

**SECTION 7‑17‑275.** Petitioning Supreme Court for costs and attorney’s fees associated with election protest.

 (A) A party opposing an election protest that prevails at the hearing before the board may petition the circuit court for reasonable costs and attorney’s fees associated with the defense of the protest if the protestant does not appeal the board’s decision to the Supreme Court. The board may also petition the circuit court for reasonable costs and expenses associated with hearing the protest. For appeals filed pursuant to Section 7‑17‑70, the petition must be filed and heard in the county where the protest was originally filed. For protests filed pursuant to Section 7‑17‑260, involving officers elected on a statewide basis, the petition must be filed and heard in Richland County. For all other protests filed pursuant to Section 7‑17‑260, the petition may be filed in any county where voting precincts comprising the election district for the office under protest are located. In order to award costs and attorney’s fees pursuant to this section, the court must find that the protestant brought the protest for an improper purpose, such as to harass or to cause unnecessary delay, or that the protest was not warranted by existing law, the facts of the case, or that it was frivolous in nature.

 (B) Upon appeal from a decision of the board, the Supreme Court may award costs and attorney’s fees associated with the appeal to the party prevailing on appeal when the Supreme Court finds that there were no reasonable grounds to appeal the decision of the board. In cases where the prevailing party is the party opposing the protest, the Supreme Court may award costs and attorney’s fees associated with the entire defense of the protest if it finds that the protestant brought the protest for an improper purpose, such as to harass or to cause unnecessary delay, or that the protest was not warranted by existing law, the facts of the case, or that it was frivolous in nature.

HISTORY: 2006 Act No. 284, Section 1, eff May 19, 2006.

Editor’s Note

2006 Act No. 284, Section 5, provides as follows:

“This act takes effect upon approval by the Governor and must not be put into practice until it receives preclearance by the United States Department of Justice.” [Preclearance received September 5, 2006]

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 90, Appeal.

**SECTION 7‑17‑280.** Mandatory recounts.

 Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidate not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

 Whenever the difference between the number of votes cast in favor of and opposed to any constitutional amendment, question or other issue is not more than one percent of the total cast thereon, the Board of State Canvassers shall order a recount of such votes to be made forthwith.

HISTORY: 1962 Code Section 23‑476.3; 1964 (53) 1744; 1974 (58) 2189; 1977 Act No. 21, eff March 23, 1977.

Effect of Amendment

The 1977 amendment inserted the words “or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify” in the first paragraph of this section.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 289‑295.

**SECTION 7‑17‑290.** Certificate of determination shall be delivered to Secretary of State.

 The Board shall make and subscribe, on the proper statement, a certificate of their determination and shall deliver the same to the Secretary of State.

HISTORY: 1962 Code Section 23‑477; 1952 Code Section 23‑477; 1942 Code Section 2321; 1932 Code Section 2321; Civ. C. ‘22 Section 255; Civ. C. ‘12 Section 253; Civ. C. ‘02 Section 227; G. S. 113; R. S. 185; 1882 (17) 1120 Section 44.

CROSS REFERENCES

Secretary of State, generally, see Sections 1‑5‑10 et seq.

**SECTION 7‑17‑300.** Secretary of State shall record result of canvass.

 The Secretary of State shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the Board of State Canvassers and every dissent or protest that shall have been delivered to him by a canvasser.

HISTORY: 1962 Code Section 23‑478; 1952 Code Section 23‑478; 1942 Code Section 2325; 1932 Code Section 2325; Civ. C. ‘22 Section 259; Civ. C. ‘12 Section 257; Civ. C. ‘02 Section 231; G. S. 135; R. S. 189; 1882 (17) 1121 Section 48.

CROSS REFERENCES

Certification determination of presidential electors, see Section 7‑19‑70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

Attorney General’s Opinions

A person should not be able to take the oath of office until the Secretary of State has in his office the certification that the person is the winner of the election because winners of elections are certified by the State Election Commission, not County Election Commissions; Attorney General’s Opinion No. 84‑134 is withdrawn as erroneous. 1989 Op Atty Gen, No. 89‑12, p 35.

**SECTION 7‑17‑310.** Copies of determinations transmitted to persons elected and Governor.

 The Secretary of State shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected and a like copy to the Governor.

HISTORY: 1962 Code Section 23‑479; 1952 Code Section 23‑479; 1942 Code Sections 2326, 2341; 1932 Code Sections 2326, 2341; Civ. C. ‘22 Sections 260, 274; Civ. C. ‘12 Sections 257, 271; Civ. C. ‘02 Sections 231, 244; G. S. 135, 148; R. S. 189, 202; 1882 (17) 1121, 1123; 1968 (55) 2316.

CROSS REFERENCES

Transmittal of copies of certified determinations as to presidential electors, see Section 7‑19‑70.

NOTES OF DECISIONS

In general 1

1. In general

The certificate here provided for is not the only evidence of election to the House of Representatives, and if such certificate be refused, a right to a seat may be shown otherwise. State v. Hayne & Mackey (S.C. 1876) 8 S.C. 367.

**SECTION 7‑17‑320.** Statements shall be printed in public newspapers.

 The Secretary of State shall cause a copy of such certified statements and determinations to be printed in one or more public newspapers of this State.

HISTORY: 1962 Code Section 23‑480; 1952 Code Section 23‑480; 1942 Code Section 2327; 1932 Code Section 2327; Civ. C. ‘22 Section 261; Civ. C. ‘12 Section 259; Civ. C. ‘02 Section 233; G. S. 137; R. S. 191; 1882 (17) 1121 Section 50.

**SECTION 7‑17‑330.** Certain certificates of election shall be sent to Congress.

 The Secretary of State shall prepare a general certificate, under the seal of the State and attested by him as Secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of such person as Representative of this State in Congress and shall transmit the same to such House of Representatives at their first meeting.

HISTORY: 1962 Code Section 23‑481; 1952 Code Section 23‑481; 1942 Code Section 2328; 1932 Code Section 2328; Civ. C. ‘22 Section 262; Civ. C. ‘12 Section 260; Civ. C. ‘02 Section 234; G. S. 138; R. S. 192; 1882 (17) 1121 Section 51.

**SECTION 7‑17‑340.** Record of elected county officers.

 The Secretary of State shall enter in a book to be kept in his office the names of the respective county officers elected in this State, specifying the counties for which they were severally elected, their place of residence, the office for which they were respectively elected and their term of office.

HISTORY: 1962 Code Section 23‑482; 1952 Code Section 23‑482; 1942 Code Section 2329; 1932 Code Section 2329; Civ. C. ‘22 Section 263; Civ. C. ‘12 Section 261; Civ. C. ‘02 Section 235; G. S. 139; R. S. 193; 1882 (17) 1121 Section 52.

ARTICLE 5

Provisions Applicable to Primary Elections

**SECTION 7‑17‑510.** Convening of county board of voter registration and elections as county boards of canvassers; canvass and certification of primary results; canvass and declaration of results by Board of State Canvassers; telecommunication or electronic communication; public access.

 The board of voter registration and elections for the counties shall convene a meeting on the Thursday next following the primary, before one o’clock p.m. of that day and shall organize as the county board of canvassers for primaries. They may appoint a competent person as secretary. The chairman shall administer the constitutional oath to each member of the board and to the secretary. The secretary shall administer to the chairman the same oath. Each county board of canvassers for primaries shall canvass the votes of the county and declare the results. The county board of canvassers for primaries shall make statements of the votes of the precincts of its county as the nature of the primary requires not later than twelve o’clock noon on the Saturday next following the primary and at that time transmit and certify to the Board of State Canvassers the results of its findings. This procedure must be repeated following every primary runoff. The Board of State Canvassers shall convene a meeting scheduled through the office of the State Election Commission and shall canvass the vote and declare the results of the primaries and the runoffs no later than twelve o’clock noon on the Saturday next following the primary in the State for state offices, federal offices, and offices involving more than one county. Nothing in this section prohibits any meeting required by this section from being conducted by using telephone conference or other means of telecommunication or electronic communication. Any meeting provided for in this section must be accessible and without cost to the public and must comply with the notice requirements of Chapter 4, Title 30, the Freedom of Information Act.

HISTORY: 1962 Code Section 23‑491; 1952 Code Section 23‑491; 1950 (46) 2059; 1992 Act No. 253, Section 11, eff February 19, 1992; 2010 Act No. 205, Section 2, eff June 8, 2010.

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 1992 amendment rewrote this section.

The 2010 amendment, in the first sentence, substituted “convene a meeting” for “meet in a convenient place in the county seat”; in the eighth sentence, substituted “convene a meeting scheduled through” for “meet at”; and added the last two sentences, relating to telecommunication or electronic communication and the Freedom of Information Act.

CROSS REFERENCES

Board of State Canvassers, see Sections 7‑17‑210 et seq.

Mandatory recount in certain elections, see Section 7‑17‑280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 10, Board of State Canvassers.

S.C. Jur. Elections Section 13, County Board of Canvassers.

S.C. Jur. Elections Section 81, Primaries.

S.C. Jur. Elections Section 83, Primaries.

NOTES OF DECISIONS

In general 1

1. In general

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.

Failure of county committee to declare results. The failure of a county committee to declare the results of a primary election and to instead take the unauthorized step of ordering another primary election short‑circuited the statutory process pertaining to primary elections; under such circumstances, the state committee correctly assumed jurisdiction over the election, including conducting a recount of the ballots and holding a hearing to consider protests; such hearing was properly held de novo, even though the record was technically flawed in that it did not reflect that 18 members affirmatively voted for review. Gregory v. South Carolina Democratic Executive Committee (S.C. 1978) 271 S.C. 364, 247 S.E.2d 439.

**SECTION 7‑17‑520.** Protests and contests generally; filing and service.

 The protests and contests in the case of county officers and less than county officers shall be filed in writing with the chairman of the county party executive committee, together with a copy for each candidate in the race not later than noon Monday following the day of the declaration by the county committee of the result of the election. Service may be perfected by depositing with the county sheriff a copy of the protest for the chairman together with a sufficient number of copies to be served upon all candidates in the protested or contested race. The sheriff must take immediate steps to deliver these copies to the chairman. The protest must contain each ground for the protest stated separately and concisely. The chairman must forthwith serve upon each candidate in the protested race a copy of the protest, and serve a notice of the time and place of the meeting of the executive committee for the purpose of hearing the protest.

HISTORY: 1962 Code Section 23‑492; 1952 Code Section 23‑492; 1950 (46) 2059; 1968 (55) 2316; 1997 Act No. 63, Section 1, eff June 10, 1997.

Effect of Amendment

The 1997 amendment rewrote this section.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 120 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 88, Primary.

Attorney General’s Opinions

Protests and contests with respect to State Senators must be filed with the State committee and decided by the State committee. 1965‑66 Op Atty Gen, No. 2076, p 171.

**SECTION 7‑17‑530.** Hearing by county executive committee.

 The executive committee shall hear the protest or contest on Thursday following the deadline for filing the protest or contest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

 The protestant and each other candidate in the protested race have the right to be present at the hearing set by the committee, to be represented by counsel, to examine and cross‑examine witnesses, and to produce evidence relevant to the grounds of protest.

 The chairman of the committee must conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman has authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing on the protests, the committee shall determine all issues by majority vote and forthwith certify the results of the election. The State Election Commission shall pay for the costs of the court reporter and the transcript of the hearing. This transcript must be filed with the appropriate state executive committee no later than 10:00 a.m. Saturday next following the decision of the county executive committee.

 The committee must remain in session until a conclusion has been reached. All candidates in the protested or contested race and the chairman of the state executive committee must be immediately notified of the decision.

HISTORY: 1962 Code Section 23‑492.1; 1968 (55) 2316; 1997 Act No. 63, Section 2, eff June 10, 1997.

Effect of Amendment

The 1997 amendment rewrote this section.

LIBRARY REFERENCES

29 C.J.S., Elections Section 127.

**SECTION 7‑17‑540.** Right to and notice of appeal from decision of county executive committee.

 The decision of the county executive committee may be appealed to the State executive committee by any candidate adversely affected thereby. Notice of such appeal and the grounds thereof shall be made not later than three o’clock P.M., Friday next following such decision by serving such notice on the chairman of the State committee. Provided, that service may be perfected by depositing at the office of the Chief of the State Law Enforcement Division a copy of the notice and grounds of appeal. A sufficient number of copies to be served upon all candidates in the protested race shall also be delivered to the county sheriff. Such officers shall take all steps necessary to deliver the notices to the respective parties.

HISTORY: 1962 Code Section 23‑492.2; 1968 (55) 2316.

LIBRARY REFERENCES

29 C.J.S., Elections Section 128.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 90, Appeal.

**SECTION 7‑17‑550.** Hearing of appeals by state executive committee.

 The state executive committee must meet in Columbia not later than twelve noon on Saturday next following the filing of any notice perfected under Section 7‑17‑540 for the purpose of hearing appeals. The appellant and each other candidate in the protested race have the right to be present at the hearing, to be represented by counsel, and to be heard on the merits of the appeal. The state committee is bound by the facts as determined by the county committee. However, if in the opinion of at least eighteen members of the state committee the facts should be reviewed, then a hearing de novo must be held by the state committee. In the event of a review of the facts, the state committee may receive any new evidence or exhibits as it in its discretion considers necessary to determine the appeal. The state committee must remain in session until all appeals have been disposed of. The State Election Commission shall pay for the costs of the court reporter and the transcript of the hearing.

HISTORY: 1962 Code Section 23‑492.3; 1968 (55) 2316; 1997 Act No. 63, Section 3, eff June 10, 1997.

Effect of Amendment

The 1997 amendment rewrote this section.

LIBRARY REFERENCES

29 C.J.S., Elections Section 128.

NOTES OF DECISIONS

In general 1

1. In general

Failure of county committee to declare results. The failure of a county committee to declare the results of a primary election and to instead take the unauthorized step of ordering another primary election short‑circuited the statutory process pertaining to primary elections; under such circumstances, the state committee correctly assumed jurisdiction over the election, including conducting a recount of the ballots and holding a hearing to consider protests; such hearing was properly held de novo, even though the record was technically flawed in that it did not reflect that 18 members affirmatively voted for review. Gregory v. South Carolina Democratic Executive Committee (S.C. 1978) 271 S.C. 364, 247 S.E.2d 439.

**SECTION 7‑17‑560.** State executive committee to hear certain protests and contests; place of hearing; filing; notice and service.

 The state executive committee must meet in Columbia at such place as may be designated by the chairman to hear and decide protests and contests that may arise in the case of federal officers, state officers, State Senate, State House of Representatives, and officers involving more than one county. Any protest or contest must be filed in writing with the chairman of the committee, together with a copy for each candidate in the race, not later than noon on Monday following the canvassing of the votes for these officers by the committee. However, service upon the chairman may be perfected by depositing at the office of the Chief of the State Law Enforcement Division a copy of the protest, together with a copy for each candidate in the race. The chief must take immediate steps to deliver these copies to the chairman. The protest must contain each ground thereof stated separately and concisely. The chairman of the committee must forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the committee for the purposes of hearing the protest.

HISTORY: 1962 Code Section 23‑492.5; 1968 (55) 2316; 1997 Act No. 63, Section 4, eff June 10, 1997.

Effect of Amendment

The 1997 amendment rewrote this section.

LIBRARY REFERENCES

29 C.J.S., Elections Section 128.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 88, Primary.

**SECTION 7‑17‑570.** Procedure for hearing protest or contest; notice of decision.

 The executive committee shall hear the protest or contest on Thursday following the deadline for filing the same. Testimony at the hearing shall be limited to the grounds stated in the written protest.

 The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross‑examine witnesses and to produce evidence relevant to the grounds of the protest. The chairman of the committee shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest the committee shall determine all issues by majority vote and forthwith certify the results of the election. The State Election Commission shall pay for the costs of the court reporter and the transcript of the hearing.

 The committee shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the committee’s decision.

HISTORY: 1962 Code Section 23‑492.6; 1968 (55) 2316; 1992 Act No. 253, Section 12, eff February 19, 1992.

Effect of Amendment

The 1992 amendment added the last sentence of the second paragraph providing that the State Election Commission pay the costs of court reporters and transcripts.

LIBRARY REFERENCES

29 C.J.S., Elections Section 128.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 13, County Board of Canvassers.

**SECTION 7‑17‑580.** Appeal of protests and contests in municipal primaries.

 In every political primary election held by any political party, organization or association in any of the cities or towns of this State for the purpose of choosing candidates for offices therein or the election of delegates to conventions thereof, the decision of any protest or contest that may arise shall be subject to appeal to the Board of State Canvassers of Municipal Primaries of this State herein provided for, and upon such appeal it shall be the duty of the committee or canvassing officers from whose decision such appeal may be made to transmit to said Board any protest and all papers relating to the election, with a copy of any evidence taken before them within ten days from their first meeting to canvass the returns of managers of such election.

HISTORY: 1962 Code Section 23‑493; 1952 Code Section 23‑493; 1950 (46) 2059.

LIBRARY REFERENCES

29 C.J.S., Elections Section 128.

**SECTION 7‑17‑590.** Board of State Canvassers for Municipal Primaries.

 The State executive committee of every political party in this State which may have such a committee shall immediately after its appointment elect from its body a committee of one from each congressional district which shall constitute the Board of State Canvassers for Municipal Primaries, each of whom, before hearing any appeal, shall take and subscribe an oath that he will fairly, impartially and honestly decide such an appeal. The Board shall, upon collection by their chairman of the estimated amount of the expenses of such appeal from the person or persons making it, decide as judicial officers all cases under protest or contest that may come before them on appeal from any decision of such committees or canvassing officers from whose decisions appeal is made upon the papers transmitted to them by such committees or canvassing officers, and the person or persons declared by the Board to be nominated at such election shall be the nominee or nominees of such political party in the respective elections for which such nominations were made. Any vacancies in said Board shall be filled by the State executive committee or, in case it should not be in session, by the chairman of the State executive committee. The members of said board shall serve until the meeting of the next State executive committee. A majority of the members of the Board shall constitute a quorum at any meeting.

HISTORY: 1962 Code Section 23‑494; 1952 Code Section 23‑494; 1950 (46) 2059.

**SECTION 7‑17‑600.** No candidate shall be declared nominated in first primary without majority vote.

 No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

HISTORY: 1962 Code Section 23‑496; 1952 Code Section 23‑496; 1950 (46) 2059.

LIBRARY REFERENCES

29 C.J.S., Elections Section 119(4).

RESEARCH REFERENCES

Encyclopedias

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

Attorney General’s Opinions

Discussion of whether votes for a legally withdrawn candidate are counted for the purpose of determining a majority in a primary contest. S.C. Op.Atty.Gen. (June 14, 2012) 2012 WL 2364241.

“Majority vote” where party to nominate two persons for same office. When an individual votes for two persons to be nominated by a party as its nominees for county council in the primary, he is casting one “vote” for that particular office although there are two seats to be filled. The method of determining how many “votes” are cast for that office is to add the vote totals of the three candidates and divide by two as each elector is supposed to vote for two candidates. A candidate must receive a majority of the figure reached by the calculation set forth above. 1969‑70 Op Atty Gen, No. 2901, p 146.

**SECTION 7‑17‑610.** What constitutes majority vote.

 It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7‑17‑600 and 7‑13‑50.

 (1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

 (2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

HISTORY: 1962 Code Section 23‑496.1; 1972 (57) 3087.

LIBRARY REFERENCES

29 C.J.S., Elections Section 119(4).

Attorney General’s Opinions

Discussion of whether votes for a legally withdrawn candidate are counted for the purpose of determining a majority in a primary contest. S.C. Op.Atty.Gen. (June 14, 2012) 2012 WL 2364241.

**SECTION 7‑17‑620.** Unopposed candidates declared nominees.

 All unopposed candidates in primary elections shall be declared the nominees of the party by the respective State or county committees.

HISTORY: 1962 Code Section 23‑497; 1952 Code Section 23‑497; 1950 (46) 2059.

LIBRARY REFERENCES

29 C.J.S., Elections Section 119(4).

ARTICLE 7

Continuation of Protests

**SECTION 7‑17‑700.** Continuation of protest in event of death of candidate in primary or nonpartisan election.

 If any candidate in a primary or nonpartisan election dies after the election but before the time for filing a protest or dies after a protest has been timely filed, his political party or a representative duly appointed by the court may file or continue the protest on his behalf. The authority reviewing the protest may then certify the results and deny the protest or uphold the protest in which case it must order a new election. In this event, additional filings of candidacy will be allowed and a new election held in the manner the authority responsible for conducting the election provides.

HISTORY: 1986 Act No. 357, eff March 28, 1986.

CROSS REFERENCES

Protests and contests of elections generally, see Section 7‑17‑30.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 245 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 92, Continuation of Protest After Death.

**SECTION 7‑17‑710.** Continuation of protest in event of death of candidate in special or general election.

 If any candidate in a special or general election dies after the election but before the time for filing a protest or dies after a protest has been timely filed, his political party or a representative duly appointed by the court may file or continue the protest on his behalf. The authority reviewing the protest may then certify the results and deny the protest or uphold the protest in which case it must order a new election. In this event, additional filings of candidacy are allowed and a new election held in the manner the authority responsible for conducting the election provides.

HISTORY: 1986 Act No. 357, eff March 28, 1986.

CROSS REFERENCES

Protests and contests of elections generally, see Section 7‑17‑30.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 245 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 92, Continuation of Protest After Death.