CHAPTER 7

Creation of New Counties and Consolidation of Counties

**SECTION 4‑7‑10.** Certain shaped counties shall not be established.

 The General Assembly shall not establish any new county the greatest length of which shall be more than four times as long as the least central width thereof or which will leave the county or counties from which the territory is taken of a length more than four times as long as the least central width thereof. And the Governor shall not order an election upon a petition for the formation of a new county when the result of the establishment of a county pursuant to such election would be to create a new county of or reduce an old county to such an area.

 The term “central width” shall be construed to mean any width not entirely within eight miles of one of the ends of the greatest length of the county.

HISTORY: 1962 Code Section 14‑151; 1952 Code Section 14‑151; 1942 Code Section 3028; 1932 Code Section 3028; Civ. C. ‘22 Section 720; 1912 (27) 841.

CROSS REFERENCES

Constitutional limitations on creation of new counties, see SC Const, Art 7, Section 1.

LIBRARY REFERENCES

20 C.J.S., Counties Section 26.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 14‑151] is constitutional. Massey v. Glenn (S.C. 1916) 106 S.C. 53, 90 S.E. 321.

**SECTION 4‑7‑20.** Petition for formation of new counties.

 Whenever two or more sections of an old county or counties desire to be incorporated into a new county there shall be filed with the Governor a petition signed by one third of the qualified electors residing within the area of each section of the old county or counties proposed to be cut off to form a new county, setting forth the boundaries of the proposed new county, the proposed name, the number of inhabitants, the area and the taxable property as shown by the last tax returns and that the proposed lines for the new county do not run nearer to any courthouse building then established than eight miles therefrom.

HISTORY: 1962 Code Section 14‑152; 1952 Code Section 14‑152; 1942 Code Section 3025; 1932 Code Section 3025; Civ. C. ‘22 Section 717; Civ. C. ‘12 Section 634; Civ. C. ‘02 Section 574; 1896 (22) 64.

CROSS REFERENCES

Constitutional limitation on the power to reduce the area of existing counties, see SC Const, Art 7, Section 4.

Other general applications of SC Const, Art 7, Sections 1, 2, see Sections 4‑7‑50, 4‑7‑90, 4‑7‑130.

LIBRARY REFERENCES

20 C.J.S., Counties Section 5.

NOTES OF DECISIONS

In general 1

1. In general

Scope and meaning of words “old county.”—The fact that the words “old county” used in this section [Code 1962 Section 14‑152] appear to have been given the meaning “any county existing at the time of the proposed formation of a new county,” furnishes reason for giving the same construction to similar words in SC Const, Art 7, Section 4. Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑30.** Procedures where there is no voting place in area affected.

 When there is no established polling place or voting place in a section proposed to be incorporated in a new county the petitioners shall name a voting place or places in their petition, and the Governor shall in his order of election designate such place or places as the voting place or places, and managers of election shall be appointed therefor, and all electors otherwise qualified shall be allowed to vote at such voting place or places so named as may be most convenient, as legally as if their registration certificates called for that place by name.

HISTORY: 1962 Code Section 14‑153; 1952 Code Section 14‑153; 1942 Code Section 3038; 1932 Code Section 3038; Civ. C. ‘22 Section 730; Civ. C. ‘12 Section 646; Civ. C. ‘02 Section 580; 1899 (23) 77; 1920 (31) 729.

**SECTION 4‑7‑40.** Petitioners shall deposit money to cover costs.

 Whenever a petition is filed for the formation of a new county the petitioners shall deposit with the clerk of court of any county affected thereby an amount of money sufficient to cover expenses of survey and plats, of the commissioners and of the election to be held to determine whether the proposed new county shall be formed. In case the result of the election be unfavorable to such formation, the deposit so required and designated shall become a part of the funds of the county or counties from which such new county was proposed to be formed.

HISTORY: 1962 Code Section 14‑154; 1952 Code Section 14‑154; 1942 Code Section 3026; 1932 Code Section 3026; Civ. C. ‘22 Section 718; Civ. C. ‘12 Section 635; 1911 (27) 155.

CROSS REFERENCES

Requirement that new counties shall pay all costs of creation, see Section 4‑7‑140.

**SECTION 4‑7‑50.** Appointment of commission.

 Whenever a petition is presented to and filed with the Governor for the creation of any new county he shall before ordering any election thereon refer the petition to a commission which he shall appoint, as provided in Section 4‑7‑60, for investigation by the Commission as to whether the requirements of the Constitution as to area, distance, wealth, population, etc., have been complied with.

HISTORY: 1962 Code Section 14‑155; 1952 Code Section 14‑155; 1942 Code Section 3027; 1932 Code Section 3027; Civ. C. ‘22 Section 719; Civ. C. ‘12 Section 636; 1905 (24) 915.

CROSS REFERENCES

Other general applications of SC Const, Art 7, Sections 1, 2, see Sections 4‑7‑20, 4‑7‑90, 4‑7‑130.

LIBRARY REFERENCES

20 C.J.S., Counties Section 18.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

Submission of petition to commission does not determine question. An appointment, under this section [Code 1962 Section 14‑155], of a commission to determine whether constitutional requirements have been complied with in the petition, does not estop the Governor from later refusing to order an election on the grounds that the proposed new county embraces the same territory as was embraced in a proposed county voted on within four years. State v. Ansel (S.C. 1907) 78 S.C. 331, 58 S.E. 933. Counties 13

As inquiry as to constitutional requirements is before Governor until election. Under this section [Code 1962 Section 14‑155] the determination of whether constitutional requirements as to the creation of new counties have been met is before the Governor until such time as he orders an election for the new county. State v. Ansel (S.C. 1907) 78 S.C. 331, 58 S.E. 933.

**SECTION 4‑7‑60.** Composition of commission.

 The commission shall consist of one person of discretion from each of the old counties, who is opposed to the new county, if there be any opposition, and an equal number of citizens who favor the formation of the new county, to be taken from within the territory of the proposed new county. The representation of the proposed new county and the old county or counties from which the new county is proposed to be formed must be equal in number on the commission.

HISTORY: 1962 Code Section 14‑156; 1952 Code Section 14‑156; 1942 Code Section 3029; 1932 Code Section 3029; Civ. C. ‘22 Section 721; Civ. C. ‘12 Section 637; 1905 (24) 915.

LIBRARY REFERENCES

20 C.J.S., Counties Section 18.

NOTES OF DECISIONS

In general 1

1. In general

Scope and meaning of words “old county.” Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑70.** Appointment and duties of surveyors.

 Upon receiving such petition and any annexed exhibits the commission shall appoint and contract with two competent surveyors, who shall not be residents of any county to be cut by the lines of the proposed new county, and these two surveyors shall name and call in a third similarly qualified to settle any points of difference between them. These surveyors shall ascertain and settle all necessary questions as to area, both of the proposed new county and of the old counties after being diminished by the new, and as to the distances of the lines of the proposed new county from any existing courthouse. They shall also make a survey of the proposed new lines and plainly mark the same, so as to clearly define the population and wealth taken and left and so as to provide a guide as to who can vote by reason of residence, if the election be finally ordered. They shall make full return and report of their finding, with plats of their work, to the commission, who shall annex the same to the petition. The surveyors shall be paid by warrant of the commission on the treasurer of each old county involved for the prorata cost of the survey made within the territory of each and to this end the surveyors shall render an itemized bill of their work for each county to be cut by the new lines.

HISTORY: 1962 Code Section 14‑157; 1952 Code Section 14‑157; 1942 Code Section 3030; 1932 Code Section 3030; Civ. C. ‘22 Section 722; Civ. C. ‘12 Section 638; 1904 (24) 915.

LIBRARY REFERENCES

20 C.J.S., Counties Section 19.

NOTES OF DECISIONS

In general 1

1. In general

In settling the question of area the surveyors exercise a quasi‑judicial power. Beaufort County v. Jasper County (S.C. 1951) 220 S.C. 469, 68 S.E.2d 421.

The law does not require the surveyors to make any actual survey of the area left in the county whose territory is to be annexed. Beaufort County v. Jasper County (S.C. 1951) 220 S.C. 469, 68 S.E.2d 421.

**SECTION 4‑7‑80.** Commission shall investigate and report facts.

 The commission, after the return by the surveyors has been filed with it, shall thoroughly investigate as to the population and wealth proposed to be taken and left by the new county and to that end may send for persons, papers and books giving statistics and may administer oaths, take testimony and employ a stenographer, if deemed by it necessary. It shall make a full report to the Governor of its finding as to the wealth and population embraced within the limits of the proposed new county and as to the wealth and population to be left in each old county to be cut by the new and shall annex to the petition its report with proper exhibits and with any evidence on which the report is based. Forthwith upon the completion of its investigation and report it shall return the petition and such finding and showing as is hereinbefore provided for to the Governor for his information.

HISTORY: 1962 Code Section 14‑158; 1952 Code Section 14‑158; 1942 Code Section 3031; 1932 Code Section 3031; Civ. C. ‘22 Section 723; Civ. C. ‘12 Section 639; 1905 (24) 915.

LIBRARY REFERENCES

20 C.J.S., Counties Section 18.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑90.** Election for new county; time and place.

 Within twenty days after receipt of the report of the commission the Governor shall order an election in the territory proposed to be cut off for the new county to be held within sixty days from the date of the order. At such election the electors shall vote “yes” or “no” upon the question of creating and upon the name and county seat of such proposed new county.

HISTORY: 1962 Code Section 14‑159; 1952 Code Section 14‑159; 1942 Code Section 3032; 1932 Code Section 3032; Civ. C. ‘22 Section 724; Civ. C. ‘12 Section 640; Civ. C. ‘02 Section 575; 1896 (22) 64.

CROSS REFERENCES

Other general applications of SC Const, Art 7, Sections 1, 2, see Sections 4‑7‑20, 4‑7‑50, 4‑7‑130.

Attorney General’s Opinions

Duty of Governor to order election. In a regularly proposed annexation of a portion of one county to another where all the constitutional and statutory prerequisites to election are met, even in the face of dissenting petitions, which under law the Governor has no power to implement, the chief executive is subject to mandamus and has no alternative to issuing his order for elections. 1965‑66 Op Atty Gen, No 2176, p 309.

Where a valid petition for annexation is presented, it is Governor’s duty to order election held and subsequent petitions seeking to remove certain portions of areas from first annexation petition do not affect the original petition. 1965‑66 Op Atty Gen, No 2181, p 314.

NOTES OF DECISIONS

In general 1

1. In general

Governor’s discretion is not reviewable by certiorari. Under this section [Code 1962 Section 14‑159] certiorari will not lie to annul a county boundary election for an unwise exercise of the Governor’s discretion as to notice of such election. Wyse v. Wolfe (S.C. 1924) 129 S.C. 499, 123 S.E. 818.

This section [Code 1962 Section 14‑159] is directory, and is for the purpose of insuring a reasonably early election after the making of the Governor’s order. Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

Election after sixty‑day period is valid. This section [Code 1962 Section 14‑159] does not prohibit the Governor from calling an election after sixty days have elapsed where a prior election had been held and subsequently declared null and void. Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑100.** Conduct of election; appointment of managers.

 For the purpose of such election the commissioners of election for each old county proposed to be cut shall appoint three managers for each voting place in the area of the old county proposed to be cut off, not more than two of whom shall be in favor of the proposed new county or against it, and shall deliver to them the books of registration for those voting places which the registration officers shall turn over to the commissioners on demand. Such election shall be conducted in the same manner as general elections in this State and all persons entitled to vote under the Constitution and laws of this State at general elections shall be entitled to vote at such election.

HISTORY: 1962 Code Section 14‑160; 1952 Code Section 14‑160; 1942 Code Section 3033; 1932 Code Section 3033; Civ. C. ‘22 Section 725; Civ. C. ‘12 Section 641; Civ. C. ‘02 Section 576; 1896 (22) 64.

CROSS REFERENCES

Qualifications of electors, see Const. Art 2, Sections 3, 4, 6; Section 7‑5‑120.

NOTES OF DECISIONS

In general 1

1. In general

Injunction does not lie to protect right to vote. Where enforcement of the provisions of this section [Code 1962 Section 14‑160] as to voting places denies certain persons their constitutional right to vote on the question of county division, equity will not enjoin the election, since an adequate remedy at law by a writ of certiorari to test the validity of the election, exists. Parler v Fogle (1907) 78 SC 570, 59 SE 707. State ex rel. Parler v Jennings (1908) 79 SC 414, 60 SE 967.

Decision as to existence of required vote is not subject to review. This section [Code 1962 Section 14‑160] and Code 1962 Section 14‑161 contain the only method prescribed by law whereby the existence or nonexistence of the two‑thirds vote necessary under Code 1962 Section 14‑163 and SC Const, Art 7, Section 2 to create new counties may be determined, and a decision rendered in accordance with these provisions may not be reviewed as to fact by the General Assembly under Code 1962 Section 14‑163. Segars v Parrott (1898) 54 SC 1, 31 SE 677, later op 54 SC 77, 31 SE 865. Fraser v James (1902) 65 SC 78, 43 SE 292.

Technical irregularities will not vitiate election. The machinery for the conduct of elections hereunder is directory, and mere technical irregularities which do not affect the result are not grounds for declaring the election void. State v. Jennings (S.C. 1908) 79 S.C. 414, 60 S.E. 967.

Scope and meaning of words “old county.” Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑110.** Canvassing election returns and certifying results.

 The commissioners of election for each old county proposed to be cut shall canvass the returns of the managers of each precinct in their county at which such election has been held, as such returns in general elections in this State are canvassed, and shall certify the result thereof in a tabulated statement of the vote at each precinct to the Secretary of State who shall transmit a tabulated statement of the vote at each precinct of an old county proposed to be cut off to both branches of the General Assembly at its next session.

HISTORY: 1962 Code Section 14‑161; 1952 Code Section 14‑161; 1942 Code Section 3034; 1932 Code Section 3034; Civ. C. ‘22 Section 726; Civ. C. ‘12 Section 642; Civ. C. ‘02 Section 577; 1899 (23) 77.

CROSS REFERENCES

The majority of votes required for alteration of county lines, see SC Const, Art 7, Section 7.

NOTES OF DECISIONS

In general 1

1. In general

Decision as to existence of required vote is not subject to review. This section [Code 1962 Section 14‑161] and Code 1962 Section 14‑160 contain the only method prescribed by law whereby the existence or nonexistence of the two‑thirds vote necessary under Code 1962 Section 14‑163 and SC Const, Art 7, Section 2 to create new counties may be determined, and a decision rendered in accordance with these provisions may not be reviewed as to fact by the General Assembly under Code 1962 Section 14‑163. Segars v Parrott (1898) 54 SC 1, 31 SE 677, later op 54 SC 77, 31 SE 865. Fraser v James (1902) 65 SC 78, 43 SE 292.

Result binding on legislature. This section [Code 1962 Section 14‑161] makes it the duty of commissioners of election to canvass the returns of an election held to determine the question of the creation of a new county and their conclusion is binding on the legislature as well as others. Fraser v. James (S.C. 1902) 65 S.C. 78, 43 S.E. 292. Counties 14

Cited in Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑120.** Election protests or contests.

 The commissioners of election, respectively, shall, as judicial officers, decide all cases of protest or contest that may arise, subject to appeal to the Board of State Canvassers. The decision of the commissioners of election shall be final and conclusive evidence of the result of the election, unless appealed from within five days, in which case a decision of the Board of State Canvassers shall be final and conclusive evidence of the election on all questions of fact.

HISTORY: 1962 Code Section 14‑162; 1952 Code Section 14‑162; 1942 Code Section 3034; 1932 Code Section 3034; Civ. C. ‘22 Section 726; Civ. C. ‘12 Section 642; Civ. C. ‘02 Section 577; 1899 (23) 77.

LIBRARY REFERENCES

20 C.J.S., Counties Section 21.

NOTES OF DECISIONS

In general 1

1. In general

But decision bars further inquiry into question of fact. In view of this section [Code 1962 Section 14‑162] no question of fact in regard to an election for new counties may be raised which is contrary to the decision of the Board of State Canvassers on appeal. State v. Jennings (S.C. 1908) 79 S.C. 414, 60 S.E. 967.

Decision of Board of Canvassers not conclusive as to questions of law. This section [Code 1962 Section 14‑162] does not make the decision of the Board of State Canvassers on disputed elections final as to questions of law. Parler v. Fogle (S.C. 1907) 78 S.C. 570, 59 S.E. 707.

**SECTION 4‑7‑130.** General Assembly shall create new county if certain conditions are met.

 The General Assembly at its next session shall create the new county if two thirds of the qualified electors voting at such election shall vote in favor of the establishment of such new county and if all the constitutional requirements for the formation of new counties have been complied with, of all of which the General Assembly must judge.

HISTORY: 1962 Code Section 14‑163; 1952 Code Section 14‑163; 1942 Code Section 3035; 1932 Code Section 3035; Civ. C. ‘22 Section 727; Civ. C. ‘12 Section 643; Civ. C. ‘02 Section 578; 1899 (23) 77.

CROSS REFERENCES

Constitutional requirements for formation of new counties, see SC Const, Art 7.

Other general applications of SC Const, Art 7, Sections 1, 2, see Sections 4‑7‑20, 4‑7‑50, 4‑7‑90.

NOTES OF DECISIONS

In general 1

1. In general

Act making annexation conditional on decision of court. The General Assembly, in an act providing for the annexation of a part of one county by another, may provide that the act shall not go into effect should the court, in any action brought pursuant to permission granted by the act, set aside the election as irregular or hold that the General Assembly was wrong in the meaning which it ascribed to a word used in the act. Such procedure is not in derogation of this section [Code 1962 Section 14‑163]. Beaufort County v. Jasper County (S.C. 1951) 220 S.C. 469, 68 S.E.2d 421.

General Assembly is only empowered to effectuate result of election. This section [Code 1962 Section 14‑163] does not empower the General Assembly to approve a resurvey made by certain individuals, altering a county line legally determined and approved under the sections of the Code providing for the formation of new counties so as to leave the resurveyed portion in the county from which it was taken by the election. Clarendon County v. Sumter County (S.C. 1921) 116 S.C. 258, 108 S.E. 103.

General acts of legislature are applicable to entire new county. Under this section [Code 1962 Section 14‑163] general acts affecting the whole State, if applicable to section of old county cut off, are applicable to entire new county. Amerker v. Taylor (S.C. 1908) 81 S.C. 163, 62 S.E. 7.

Determination by legislature of constitutional requirements is not subject to review. Under this section [Code 1962 Section 14‑163] the determination by the legislature of the existence of the constitutional requirements for the formation of new counties may not be assailed in any court by evidence aliunde. Fraser v. James (S.C. 1902) 65 S.C. 78, 43 S.E. 292.

Constitutionality. This section [Code 1962 Section 14‑163], to be constitutional, must be interpreted as leaving power in the General Assembly only to determine whether the result of the election has been ascertained in the manner prescribed by law. Segars v. Parrott (S.C. 1898) 54 S.C. 1, 31 S.E. 677.

**SECTION 4‑7‑140.** Payment of costs by new county; tax.

 In case such new county is formed the county so newly created shall pay all the costs and expenses of its creation, and in no wise shall any county which has been cut for the formation of a new county be liable for any of the cost or expenses incurred in cutting the same or in the formation thereof. The auditor of the newly created county, after such county has been organized and its officers elected, shall levy a tax upon all the taxable property in his county sufficient to cover the costs and expenses of its creation.

HISTORY: 1962 Code Section 14‑164; 1952 Code Section 14‑164; 1942 Code Section 3026; 1932 Code Section 3026; Civ. C. ‘22 Section 718; Civ. C. ‘12 Section 635; 1911 (27) 155.

CROSS REFERENCES

Requirement that a deposit to cover costs be made whenever a petition is filed for the creation of a new county, see Section 4‑7‑40.

Right of counties to sue and be sued, see Section 4‑1‑10.

NOTES OF DECISIONS

In general 1

1. In general

County is liable for money borrowed for creation purposes. Where a special organization commission, formed for the purpose of creating a new county, is vested with ample authority to borrow money needed to form the new county, then under this section [Code 1962 Section 14‑164] an action for the recovery of such money borrowed by the commission may be maintained against the newly formed county. Bank of McCormick v. McCormick County (S.C. 1920) 114 S.C. 469, 103 S.E. 787.

And approval of county board after creation is consummated unnecessary. Action against a county for the recovery of money borrowed to pay expenses of the formation of such county is maintainable, even though the claim is not audited and approved by the county board of the new county after its creation. Bank of McCormick v. McCormick County (S.C. 1920) 114 S.C. 469, 103 S.E. 787.

**SECTION 4‑7‑150.** Time between elections for new counties.

 No election shall be ordered for the creation or establishment of any new county which shall embrace one half or more of the area of any proposed new county in which an election for its creation was defeated within four years preceding the date of the filing of the petition for such new county.

HISTORY: 1962 Code Section 14‑165; 1952 Code Section 14‑165; 1942 Code Section 3036; 1932 Code Section 3036; Civ. C. ‘22 Section 728; Civ. C. ‘12 Section 644; 1908 (25) 1080.

CROSS REFERENCES

Constitutional requirement that election upon the question of forming the same new county shall not be held oftener than once in four years, see SC Const, Art 7, Section 2.

NOTES OF DECISIONS

In general 1

1. In general

“Defeated” contemplates elections set aside. Robinson v. McCown (S.C. 1916) 104 S.C. 285, 88 S.E. 807.

**SECTION 4‑7‑160.** Procedures when citizens desire two or more counties to consolidate.

 Whenever the citizens of two or more counties desire to consolidate them into one they shall file a petition with the Governor to that effect, signed by one third of the qualified electors residing in the counties, and upon the filing of such petition the same proceedings shall be had as in the formation of new counties provided for in this chapter. At the election ordered upon such petition the electors shall vote for or against consolidation, the name of the new county and the location of the county seat.

HISTORY: 1962 Code Section 14‑166; 1952 Code Section 14‑166; 1942 Code Section 3040; 1932 Code Section 3040; Civ. C. ‘22 Section 732; Civ. C. ‘12 Section 648; Civ. C. ‘02 Section 581.

CROSS REFERENCES

Constitutional requirements regarding consolidation and merger of counties, see Const. Art 7, Section 10; Art 8, Sections 4, 5.

LIBRARY REFERENCES

20 C.J.S., Counties Section 23.