CHAPTER 15

Nominations and Elections for Municipal Offices

**SECTION 5‑15‑10.** Municipal primary, general and special elections conducted mutatis mutandi.

 Municipal primary, general and special elections shall be conducted pursuant to Title 7, mutatis mutandi, except as otherwise provided for specifically in Chapters 1 through 17.

HISTORY: 1962 Code Section 47‑90; 1975 (59) 692.

CROSS REFERENCES

Elections generally, see Title 7, Sections 7‑1‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 129.

Westlaw Key Number Search: 268k129.

C.J.S. Municipal Corporations Sections 350, 353 to 354, 367.

**SECTION 5‑15‑20.** Methods of election of council; mayor elected at large; qualifications.

 Each municipality in this State shall provide by ordinance for the election of its council. Councils shall select any one of the following methods of election of council:

 (1) Members of the council elected from the municipality at large.

 (2) One member elected from each ward of the municipality by the qualified electors of the ward. Candidates seeking office from a particular ward shall be residents of the ward during their entire terms of office.

 (3) Some members elected from wards as provided for in (2) and the remainder elected from the municipality at large.

 (4) Members required to be residents of particular wards but be elected from the municipality at large.

 (5) Some members may be required to be residents of particular wards and others may be residents of the municipality without regard to a particular ward and all members shall be elected from the municipality at large.

 Regardless of the form adopted by the municipality, the mayor shall be elected at large.

 Mayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification.

HISTORY: 1962 Code Section 47‑91; 1975 (59) 692; 1976 Act No. 623, Section 6.

CROSS REFERENCES

Qualifications of municipal electors, see SC Const, Art 2, Section 5.

LIBRARY REFERENCES

Municipal Corporations 127, 129.

Westlaw Key Number Searches: 268k127; 268k129.

C.J.S. Municipal Corporations Sections 340, 350, 353 to 354, 367.

Attorney General’s Opinions

City council member vacates his office at time he ceases to be resident of city, and would continue to serve in de facto capacity until vacancy is filled. 1984 Op Atty Gen, No. 84‑118, p. 271.

**SECTION 5‑15‑30.** Procedure for changing number of or method of election of council members.

 If by action of a majority of council, or if fifteen percent of the registered municipal electors present to the municipal election commission a duly executed petition on which none of the signatures is more than six months old, in which an election is sought to change the number of council members to a number authorized by the form of government under which the municipality is then operating or to change the method of election of council members, then the municipal governing body shall call a referendum not later than ninety days nor earlier than thirty days after the petition has been certified and delivered to the governing body by the municipal election commission. A petition must be certified as valid or rejected by the municipal election commission within sixty days after it has been delivered to the commission. There may be only one question framed by the municipal governing body for the referendum in a format similar to that provided by Section 5‑5‑40, and no other election on the same question may be held for two years after that time. If more than one petition is received before publication of a notice of special election, the change sought in the petition bearing the highest number of qualified signatures must be submitted on the ballot. A change receiving a majority of the votes cast is effective at the next general election of the municipality.

HISTORY: 1962 Code Section 47‑91.1; 1975 (59) 692; 1988 Act No. 455; 1990 Act No. 490, Section 1.

LIBRARY REFERENCES

Municipal Corporations 108.10.

Westlaw Key Number Search: 268k108.10.

C.J.S. Municipal Corporations Sections 314, 319 to 324.

Attorney General’s Opinions

A referendum is not required under State law to change municipal elections from partisan to nonpartisan. S.C. Op.Atty.Gen. (March 31, 2014) 2014 WL 1398577.

The thirty‑to‑ninety day time frame of section 5‑15‑30 is to be calculated from the date of receipt of a petition by a city council, rather than from the date of receipt of the verification results. 1988 Op Atty Gen, No. 88‑1, p 18.

**SECTION 5‑15‑40.** Terms of office of mayor and councilmen.

 The mayor and councilmen of each municipality shall be elected for terms of two or four years. Unless otherwise provided by ordinance, four‑year terms shall be set so that not more than one‑half of the council and mayor shall be elected in the same general election; provided, that in the first election after incorporation of a new municipality or adoption of a form of government pursuant to Section 5‑5‑10, one‑half of the councilmen may be elected for terms of two years and one‑half of the councilmen and mayor may be elected for terms of four years if necessary to establish staggered terms. Two‑year terms shall not be staggered.

HISTORY: 1962 Code Section 47‑92; 1975 (59) 692; 1977 Act No. 81, Section 1A.

LIBRARY REFERENCES

Municipal Corporations 149(2).

Westlaw Key Number Search: 268k149(2).

C.J.S. Municipal Corporations Sections 361 to 363.

Attorney General’s Opinions

Council does not possess the authority to summarily remove a fellow councilmember, either from office or attendance at a meeting, absent the existence of cause. S.C. Op.Atty.Gen. (November 16, 2015) 2015 WL 7573853.

Irmo Town Council may, by ordinance, change their terms of office from 2 to 4 year terms and stagger such terms. This change would have to be pre‑cleared pursuant to provisions of Voting Rights Act. 1984 Op.Atty.Gen. No. 84‑29, p. 70 (March 16, 1984) 1984 WL 159836.

Under Section 47‑92, [1976 Code Section 5‑15‑40] the Home Rule Act, mayor and councilmen may be elected for either four‑year or two‑year terms as the municipal governing body determines. 1976‑77 Op.Atty.Gen. No 77‑25, p 31 (January 21, 1977) 1977 WL 24368.

**SECTION 5‑15‑50.** Establishment of municipal ward lines and time for general and special elections; public notice of elections.

 Each municipal governing body may by ordinance establish municipal ward lines and the time for general and special elections within the municipality. Public notice of the elections shall be given at least sixty days prior to such elections.

HISTORY: 1962 Code Section 47‑93; 1975 (59) 692; 1978 Act No. 435, Section 3.

LIBRARY REFERENCES

Municipal Corporations 127.

Westlaw Key Number Search: 268k127.

C.J.S. Municipal Corporations Section 340.

Attorney General’s Opinions

Under Section 7‑7‑10 and Section 5‑15‑50, South Carolina Code of Laws, 1976, the General Assembly is the only authority which should draw ward lines for voting purposes; municipalities can draw ward lines pursuant to Section 5‑15‑50, South Carolina Code of Laws, 1976, for other than election purposes; if the General Assembly fails to designate a voting place another authority may designate the voting place; municipalities can not be able to pool all the precincts in municipality for municipal election. 1978 Op Atty Gen, No 78‑70, p 99.

Voting precinct boundaries may be changed only by the General Assembly. 1987 Op Atty Gen, No. 87‑11, p 46.

The provisions of Act No. 503 of 1976 supercede the provisions of Section 5‑15‑50, Code of Laws of S. C., 1976, and provides that for the purpose of holding any general, primary or special election in this State, the voting precincts and voting places in the several counties of the State shall be designated, fixed and established by the General Assembly and not by the municipalities. 1976‑77 Op Atty Gen, No 77‑251, p 184.

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

NOTES OF DECISIONS

Time for elections 1

1. Time for elections

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

Municipality may hold elections, primary or otherwise, whenever it wishes. Willis v. Wukela (S.C. 2008) 379 S.C. 126, 665 S.E.2d 171. Election Law 296

**SECTION 5‑15‑60.** Municipality to adopt method of nominating candidates for and determining results of nonpartisan elections.

 Each municipality in this State shall adopt by ordinance one of the following alternative methods of nominating candidates for and determining the results of its nonpartisan elections:

 (1) The nonpartisan plurality method prescribed in Section 5‑15‑61;

 (2) The nonpartisan election and runoff election method prescribed in Section 5‑15‑62;

 (3) The nonpartisan primary election and general election method prescribed in Section 5‑15‑63. If nonpartisan elections are not provided for, nomination of candidates for municipal offices may be by party primary, party convention or by petition in accordance with the provisions of this chapter, the applicable provisions of the state election laws and the rules of municipal political party organizations not in conflict therewith.

HISTORY: 1962 Code Section 47‑94; 1975 (59) 692; 1977 Act No. 81, Section 2.

LIBRARY REFERENCES

Municipal Corporations 129.

Westlaw Key Number Search: 268k129.

C.J.S. Municipal Corporations Sections 350, 353 to 354, 367.

Attorney General’s Opinions

A referendum is not required under State law to change municipal elections from partisan to nonpartisan. S.C. Op.Atty.Gen. (March 31, 2014) 2014 WL 1398577.

The City of Barnwell may not elect its council members by a majority vote feature and its mayor by a plurality vote feature and at the same time remain in compliance with Section 5‑15‑60. 1994 Op Atty Gen, No. 94‑72, p. 150.

NOTES OF DECISIONS

In general 1

1. In general

Municipal ordinance did not provide for two methods of nomination for municipal elections in violation of state law, and therefore ordinance was valid; although attachment to ordinance stated that the method to be used was “nonpartisan plurality/nonpartisan run off” and failed to choose between those two methods, body of ordinance clearly indicated that city intended to adopt nonpartisan plurality method, and the attachment merely set forth options presented to city council when it was deciding which method to adopt and was not corrected when ordinance was finally adopted. Mitchell v. City of Greenville (S.C. 2015) 411 S.C. 632, 770 S.E.2d 391. Election Law 230

Provisions for a runoff election contained in Code 1962 Section 47‑94 [Code 1976 Section 5‑15‑60] did not apply to an election held prior to the effective date of the change of form of government under the Home Rule Act. Colyer v. Thomas (S.C. 1977) 268 S.C. 455, 234 S.E.2d 862.

**SECTION 5‑15‑61.** Determination of election results under nonpartisan plurality method.

 In conducting nonpartisan elections and using the plurality method, election results shall be determined in accordance with the following rules:

 (1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

 (2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

HISTORY: 1962 Code Section 47‑94.1; 1977 Act No. 81, Section 1.

CROSS REFERENCES

West Florence Fire District Commission, see Section 4‑23‑1010.

LIBRARY REFERENCES

Elections 237.

Westlaw Key Number Search: 144k237.

C.J.S. Elections Sections 241 to 243.

**SECTION 5‑15‑62.** Determination of election results under nonpartisan election and runoff election method.

 (a) Except as otherwise provided in this section, results in nonpartisan municipal elections in municipalities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

 (1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total votes 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 elected.

 (2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of officers 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 elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

 (b) If no candidate for a single office receives a majority of the votes cast in the first election or if an insufficient number of candidates receives a majority of the votes cast for a group of offices, a runoff election shall be held as herein provided:

 (1) If no candidate for a single office receives a majority of the votes cast in the first election, a second election shall be conducted two weeks later between the two candidates receiving the largest number of votes in the first election who do not withdraw. The candidate receiving a majority of the votes cast in the runoff election shall be declared elected.

 (2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes cast in the first election, a second election shall be conducted two weeks later between one more than the number of candidates necessary to fill the vacant offices. The candidates receiving the highest number of the votes cast in the second election equal in number to the number to be elected shall be declared elected.

HISTORY: 1962 Code Section 47‑94.2; 1977 Act No. 81, Section 1.

LIBRARY REFERENCES

Elections 237.

Westlaw Key Number Search: 144k237.

C.J.S. Elections Sections 241 to 243.

Attorney General’s Opinions

Absent any controlling case law or legislation providing otherwise, it would appear that write‑in candidacies should not be permitted for the runoff election of the municipal nonpartisan election and runoff method of selecting municipal council members and mayors, Section 5‑15‑62 of the Code, and write‑in ballots probably should not be counted in the ballot totals of the runoff election. 1987 Op Atty Gen, No. 87‑25, p 76.

**SECTION 5‑15‑63.** Determination of election results under nonpartisan primary election and general election method.

 (a) In municipalities whose elections are nonpartisan and which use the nonpartisan primary election and general election method, there shall be a primary election to reduce the field of candidates to two candidates for each position to be filled, if when the filing period closes there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary election shall be held for that office and the candidates shall be declared nominated.

 (b) In the primary election the two candidates for a single office receiving the highest number of votes and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated.

 (c) In the election, the names of those candidates declared nominated without a primary election and those candidates nominated in the primary election shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be declared elected.

HISTORY: 1962 Code Section 47‑94.3; 1977 Act No. 81, Section 1.

LIBRARY REFERENCES

Elections 237.

Westlaw Key Number Search: 144k237.

C.J.S. Elections Sections 241 to 243.

**SECTION 5‑15‑70.** Duty of governing body of municipality to enact ordinances relating to time requirements for nominations, primaries and the like.

 Each municipal governing body shall determine by ordinance the time for filing nominating petitions, holding primary elections or conventions, the time for entry of candidates for nominations in municipal party primary elections or conventions, the time for closing of entries, and the time and manner of filing by candidates in nonpartisan elections. The municipal governing body may determine by ordinance that either filing a statement of candidacy or a petition with the municipal election commission is required to place the name of the candidate on the ballot in nonpartisan general elections. However, no candidate’s name may be placed on the ballot by petition in a general election conducted in accordance with the provisions of Section 5‑15‑63. If the municipal council determines that the petition method is used, the percentage of electors required on these petitions may not be less than five percent of the qualified electors of the geographical area of the office for which he offers as a candidate.

 When a candidate’s name is to be placed on the ballot by virtue of a primary election or convention, the party concerned shall certify the candidacy to the municipal election commission not later than sixty days prior to the election. When the filing by statement of candidacy is authorized, the individual candidate shall file the statement with the commission not later than sixty days prior to the election and the commission shall place the name of the candidate upon the ballot. If the petition method is authorized, the candidate shall file the necessary petition with the municipal clerk seventy‑five days prior to the general election concerned and the clerk shall deliver the petition to the commission. The commission shall examine the petition and determine its validity not later than sixty days prior to the general election concerned and when so validated, the commission shall place the name of the petition candidate upon the ballot.

 For nonpartisan special elections, if the petition method is authorized, the candidate shall file the petition with the municipal clerk not later than twelve o’clock noon, sixty days prior to the election. The commission shall determine the validity of the petition not later than forty‑five days prior to the election and when so validated, shall place the candidate’s name on the ballot. If the statement of candidacy is authorized, these statements must be filed not later than twelve o’clock noon, forty‑five days prior to the election.

 For partisan special elections, petitions must be submitted pursuant to Section 7‑13‑190(B).

HISTORY: 1962 Code Section 47‑95; 1975 (59) 692; 1977 Act No. 81 Section 3; 1988 Act No. 387, Section 1; 1998 Act No. 412, Section 1.

LIBRARY REFERENCES

Municipal Corporations 129.

Westlaw Key Number Search: 268k129.

C.J.S. Municipal Corporations Sections 350, 353 to 354, 367.

NOTES OF DECISIONS

Time for elections 1

1. Time for elections

Municipality may hold elections, primary or otherwise, whenever it wishes. Willis v. Wukela (S.C. 2008) 379 S.C. 126, 665 S.E.2d 171. Election Law 296

**SECTION 5‑15‑80.** Results of political party primaries; protests and contests.

 The results of any political party primary shall be declared by the party conducting the election. Protests and contests shall be filed in writing with the municipal party chairman within two days after the day of the declaration of the results of the election and the municipal party executive committee shall determine such protests within five days after the filing thereof. From the decision of the municipal party committee an appeal may be made to the Board of State Canvassers of Municipal Primaries as provided in Section 7‑17‑580. Notice and grounds of appeal must be filed in writing with the chairman of the Board of State Canvassers of Municipal Primaries within five days following the date on which the decision of the municipal committee is declared.

 Any appeal thereafter shall be to the court of common pleas of the county in which the municipality is situate. Notice and grounds of appeal shall be served on the opposing parties or their attorneys within ten days following the decision of the Board of State Canvassers of Municipal Primaries.

HISTORY: 1962 Code Section 47‑96; 1975 (59) 692.

LIBRARY REFERENCES

Elections 269, 278.

Westlaw Key Number Searches: 144k269; 144k278.

C.J.S. Elections Section 1(10), 246 to 248, 258 to 260.

**SECTION 5‑15‑90.** Municipal elections conducted by municipal election commission; composition of commission and terms of members; training and certification program.

 (A) All municipal elections held under the provisions of this chapter must be conducted by a municipal election commission composed of three electors who must be residents of the municipality and who must be appointed by the municipal governing body. The terms of the members are six years except of those first appointed one shall serve a term of four years and one a term of two years.

 (B)(1) Each municipal election commissioner and each staff person designated by the commission, shall complete, within eighteen months after a commissioner’s initial appointment or his reappointment after a break in service, or within eighteen months after a staff person’s initial employment or reemployment following a break in service, a training and certification program conducted by the State Election Commission. When a commissioner or staff person has successfully completed the training and certification program, the State Election Commission shall issue the commissioner or staff person a certification, whether or not the commissioner or staff person applies for the certification.

 (2)(a) The provisions of this section do not exempt a member or staff person from completing the training and certification program required in item (1).

 (b) A member appointed or reappointed after a break in service before the effective date of this section or a staff person employed or reemployed after a break in service before the effective date of this section shall successfully complete a training and certification program by the latter of:

 (i) eighteen months after the member’s appointment or reappointment after a break in service or the staff person’s employment or reemployment after a break in service; or

 (ii) ninety days after the effective date of this section.

 (c) On and after the effective date of this section, a member appointed or reappointed after a break in service or a staff person employed or reemployed after a break in service shall complete the training and certification program required in item (1) within eighteen months after the member’s appointment or reappointment after a break in service or staff person’s employment or reemployment after a break in service.

 (3) If a member does not fulfill the training and certification program as provided in this section, the municipal governing body, upon notification, shall remove that member from the board unless the municipal governing body grants the member an extension to complete the training and certification program based upon exceptional circumstances.

 (4) Following completion of the training and certification program required in item (1), each commission member, and staff person designated by the commission, shall take at least one training course each year.

HISTORY: 1962 Code Section 47‑97; 1975 (59) 692; 2010 Act No. 191, Section 1, eff May 28, 2010.

Effect of Amendment

The 2010 amendment added the subsection designators and added all the text following subsection (A), and made other nonsubstantive changes in subsection (A).

LIBRARY REFERENCES

Municipal Corporations 129.

Westlaw Key Number Search: 268k129.

C.J.S. Municipal Corporations Sections 350, 353 to 354, 367.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 14, Appointment.

**SECTION 5‑15‑100.** Functions, powers and duties of municipal election commission.

 The municipal election commission shall be vested with the functions, powers and duties of Municipal Supervisors of Registration if no such supervisors have been appointed pursuant to Section 7‑5‑640, and shall also have the functions, powers and duties of commissioners of election, as set forth in Section 7‑5‑10 and other provisions of Title 7. The municipal election commission shall insure proper books of registration are provided for each ward or precinct, shall prepare and distribute ballots and election materials, appoint managers of election for each polling place and otherwise supervise and conduct all municipal, special and general elections. The managers shall certify the results of the election to the commission within one day and the commission shall declare the results not later than three days following the election.

 Nominees in a party primary or party convention and nominees by petition shall be certified to the municipal election commission within the time specified herein and when so certified, the commission shall place the names of such nominees upon the ballots.

HISTORY: 1962 Code Section 47‑98; 1975 (59) 692.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 7‑13‑70 in the first paragraph was changed to Section 7‑5‑10, to correct the reference in light of 2014 Act No. 196, which repealed Section 7‑13‑70 and amended Section 7‑5‑10.

LIBRARY REFERENCES

Municipal Corporations 129.

Westlaw Key Number Search: 268k129.

C.J.S. Municipal Corporations Sections 350, 353 to 354, 367.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 9, Duties of the State Election Commission.

S.C. Jur. Elections Section 15, Duties.

S.C. Jur. Elections Section 49, Appointment.

**SECTION 5‑15‑110.** Filing with municipal election commission of nomination petition by candidates nominated by petition.

 Candidates for municipal offices in any partisan or nonpartisan general election nominated by petition shall file the necessary petition with the municipal election commission seventy‑five days before the general election concerned. The commission shall examine the petition and determine its validity not later than sixty days before the general election concerned. A nomination petition must bear the signatures of not less than five percent of the qualified electors of the geographical area of the office for which he offers as a candidate.

HISTORY: 1962 Code Section 47‑99; 1975 (59) 692; 1977 Act No. 81 Section 4; 1988 Act No. 387, Section 2; 1998 Act No. 412, Section 2.

LIBRARY REFERENCES

Elections 156.

Westlaw Key Number Search: 144k156.

**SECTION 5‑15‑120.** Vote counting.

 Immediately upon the closing of the polls at any municipal election, the managers shall count publicly the votes cast and make a statement of the whole number of votes cast in such election together with the number of votes cast for each candidate for mayor and councilman and transmit this information to the municipal election commission. In partisan elections the person securing the highest number of votes for mayor shall be declared elected and the councilmen shall be selected by the following methods:

 (a) When all councilmen are to be elected at large, the persons receiving the highest number of votes in number equal to the number to be chosen shall be declared elected.

 (b) When the councilmen are to be elected from each ward and are required to be residents of that ward, the person receiving the highest number of votes in that ward shall be declared elected.

 (c) When some councilmen are to be elected from each ward and required to be residents of that ward and the remainder of the councilmen to be elected at large, those persons receiving the highest number of votes in each ward shall be declared elected and those persons running at large who receive the highest number of votes in number equal to the number to be chosen at large shall be declared elected.

 (d) When all councilmen are to be elected at large, but required to reside in a particular ward, the person receiving the highest number of votes for the seat to be filled shall be declared elected.

 (e) When all councilmen are to be elected at large, but some are required to be residents of particular wards and other councilmen may not be so required, the person receiving the highest number of votes for the seat to be filled shall be declared elected.

 Newly elected officers shall not be qualified until at least forty‑eight hours after the closing of the polls and in the case a contest is finally filed the incumbents shall hold over until the contest is finally determined.

HISTORY: 1962 Code Section 47‑100; 1975 (59) 692; 1977 Act No. 81, Section 5.

CROSS REFERENCES

Determination of election results in nonpartisan elections, see Sections 5‑15‑61 et seq.

LIBRARY REFERENCES

Elections 235.

Westlaw Key Number Search: 144k235.

C.J.S. Elections Sections 221, 237(4), 243.

Attorney General’s Opinions

(1) Under Section 47‑29.2, [1976 Code Section 5‑5‑60] a city council member who fails to win re‑election is still able to serve out the term he is serving; (2) In the North Augusta County Council race, crossover voting is handled as follows: (a) If a person votes a straight Democratic Party ticket and then votes for the Republican candidate for Mayor, you would count the vote for Mayor and six votes for the democratic candidates for Council; (b) If a person votes a straight Democratic ticket and votes for one Republican candidate for Council you would count the vote for the Democratic Mayor and not count the votes for the Council races. 1976‑77 Op Atty Gen, No 77‑162, p 133.

Allendale Town Council may continue to convene pending the outcome of a contested vacancy on the Council. Until the question of seating the contested Council seat has been resolved, the Town Council would be comprised of the mayor, council members already sworn in and the two incumbents whose election contest has not yet been decided. Actions taken by the incumbents, as de facto officers would generally be regarded as valid and effectual as those taken by de jure officers, unless or until a court should declare otherwise. 1988 Op Atty Gen, No. 88‑41, p 124.

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 5‑15‑125.** Municipal elections resulting in tie.

 If any municipal election results in a tie, the municipal election commission or the municipal party committee shall conduct a runoff election to break the tie two weeks following that election. In the tie‑breaking runoff, the laws of this State apply, mutatis mutandi. If the date for the tie‑breaking runoff election falls on a legal holiday, it must be set for the same day of the first week following which is not a legal holiday. If a tie‑breaking runoff election is required, any remaining municipal elections required are postponed for two weeks. If the date of a postponed election falls on a legal holiday, it must be set for the same day of the first week following which is not a legal holiday.

HISTORY: 1988 Act No. 364, Section 1.

LIBRARY REFERENCES

Elections 238.

Westlaw Key Number Search: 144k238.

C.J.S. Elections Section 244.

**SECTION 5‑15‑130.** Procedures for contesting results of election.

 Within forty‑eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers by filing a written notice of such contest together with a concise statement of the grounds therefor with the Municipal Election Commission. Within forty‑eight hours after the filing of such notice, the Municipal Election Commission shall, after due notice to the parties concerned, conduct a hearing on the contest, decide the issues raised, file its report together with all recorded testimony and exhibits with the clerk of court of the county in which the municipality is situated, notify the parties concerned of the decisions made, and when the decision invalidates the election the council shall order a new election as to the parties concerned.

 Neither the mayor nor any member of council shall be eligible to pass on the issues arising in any contest in which he is a party.

HISTORY: 1962 Code Section 47‑101; 1975 (59) 692.

LIBRARY REFERENCES

Elections 273, 300.

Westlaw Key Number Searches: 144k273; 144k300.

C.J.S. Elections Sections 261, 263 to 266, 298, 300.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 15, Duties.

S.C. Jur. Elections Section 87, Municipality.

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

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

NOTES OF DECISIONS

In general 1

Admission of evidence 6

Delay 5.5

Grounds for contest 5

Hearing 4

New election 7

Notice 2

Pleading and proof 3

Purpose 1.5

1. In general

Supreme Court would decline to impose standards for written orders on election commissions beyond those imposed by statute requiring an election commission to conduct a hearing, decide the issues raised, file a report with the testimony and exhibits, and notify the parties of the decision. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 563; Election Law 567

Right to contest election exists only under applicable state constitutional and statutory provisions, and procedure prescribed by statute must be strictly followed; no right to contest election exists at common law. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 511

Ability to contest municipal election is privilege bestowed by state law; there is no common law or federal constitutional right to be afforded hearing in election contest. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 563

Circuit court had no authority to consider unsuccessful candidate’s allegations of election improprieties that were never raised before municipal Election Commission. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 560(1)

Circuit court lacks express or implied authority to conduct full hearing on election challenge if hearing is denied by municipal election commission; circuit court is by statute appellate court in such circumstances, and it is axiomatic that one cannot present and try his case on one theory and thereafter advocate another theory on appeal. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 563

Trial court had inherent power to dismiss sua sponte purchaser’s counterclaims in foreclosure action based on purchaser’s repeated failure to appear, prosecute, and defend action. Crestwood Golf Club, Inc. v. Potter (S.C. 1997) 328 S.C. 201, 493 S.E.2d 826, rehearing denied. Pretrial Procedure 674

Where petition for commission for election on question of incorporation of subdivision on its face met requirements of Section 47‑102, Secretary of State was required to issue commission; fact that voters of proposed town were registered in different precincts was of no legal consequence. Green v. Thornton (S.C. 1975) 265 S.C. 436, 219 S.E.2d 827. Mandamus 74(2)

1.5. Purpose

The main purpose of law that requires the municipal election commission to take a number of actions within forty‑eight hours of the candidates filing protests, conduct a hearing, decide the issues, file a report that includes the transcribed testimony and exhibits with the county clerk, notify the parties of the decision, and order a new election, if necessary, is to expeditiously finalize protested municipal elections in the interest of realizing the voters’ will and seamlessly transitioning governmental offices. Cole v. Town of Atlantic Beach Election Com’n (S.C. 2011) 393 S.C. 264, 712 S.E.2d 440, rehearing denied. Election Law 536

2. Notice

A notice of election contest should briefly state facts or a combination of facts sufficient to apprise the election commission and winning candidate of the reason for the challenge; it is not sufficient to allege fraud generally or mere conclusions of the protesting person. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 544(2)

Notice of election contest should briefly state facts or combination of facts sufficient to apprise contestee of cause for which his election is contested, it being insufficient to allege generally that fraud was committed, or to allege mere conclusions of the pleader. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 538

General allegation of election fraud is insufficient to notify contestee as to cause for contest; reason and justice require that grounds relied upon should be stated plainly and clearly, so that contestee may prepare to meet them without unnecessary labor or expense. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 544(2)

3. Pleading and proof

Municipal election commission fulfilled its statutory duty under existing law when it certified results of nonpartisan election for mayor and town council and advised unsuccessful candidates by letter that they had not proved late opening of polls affected outcome of election, that allegations of fraud and bribery were not proven, and that further allegations of ballots being seen and ballots being removed from the voting place were also not proven. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 450

Challenge to accuracy of news article which incorrectly reported date of upcoming public election was not statutory ground for protest, in that it failed to allege an election irregularity or illegality; official notices of election which appeared in newspaper satisfied timeliness and accuracy requirements of applicable statute, article at issue was not official election notice, and protestor did not challenge official notices. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 544(4)

To maintain election contest, contest notice must allege irregularities or illegalities in election, and such alleged irregularities or illegalities must have changed or rendered doubtful result of the election in absence of fraud, constitutional violation, and statute providing that such irregularity or illegality shall invalidate election. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 538

4. Hearing

Election Commission was not required to conduct formal hearing to inform election challenger of its determination that his election challenge based on inaccurate date reported in news article concerning election failed to allege election irregularity or illegality, as challenger had no common law or federal constitutional right to be afforded hearing in election contest. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 563

Hearing was not required on unsuccessful candidate’s challenge to election results, where candidate did not provide any statutorily valid grounds for protest in his letter to Election Commission. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 563

5. Grounds for contest

Result of election for town mayor, in which candidate won by a one vote margin, was doubtful, such that new election was required, as four voters were denied the right to vote despite the fact that they met statutory residency requirement. Armstrong v. Atlantic Beach Mun. Election Com’n (S.C. 2008) 380 S.C. 47, 668 S.E.2d 400. Election Law 560(4)

Notice of election contest filed by unsuccessful candidate for city council, stating that “persons who had not provided accurate information for the voter rolls were nonetheless allowed to cast full ballots” sufficiently, provided a “concise statement of the grounds,” as required for an election contest by statute, where at least two votes were cast by persons who no longer lived in the precinct at which they voted at time of election. Gecy v. Bagwell (S.C. 2007) 372 S.C. 237, 642 S.E.2d 569. Election Law 544(2)

There are two prerequisites to maintaining an election contest: (1) contest notice must allege irregularities or illegalities; and (2) alleged irregularities or illegalities must have changed or rendered doubtful the result of the election in the absence of fraud, a constitutional violation, or a statute providing that such irregularity or illegality shall invalidate the election. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 544(5)

Unsuccessful candidate’s query to election committee as to reason “why it would take several hours to count votes for the election?”, which did not specify what candidate believed occurred during those hours, amounted to nothing more than general allegation of fraud and therefore could not serve as ground for election contest. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 517

5.5. Delay

Delay by municipal election commission (MEC) in ordering transcript of election protest hearing, and the filing of its final order decertifying election, beyond the statutory 48‑hour limit, was a direct attempt by the MEC to interfere with the full and fair expression of the voters’ choice, necessitating the restoration of the original certification of candidates as winners, where MEC’s delay was not just by a few hours or days, but was by several months, during which time the parties protesting the election, in which they were defeated as town councilmember incumbents, were allowed to remain in their town councilmember positions. Cole v. Town of Atlantic Beach Election Com’n (S.C. 2011) 393 S.C. 264, 712 S.E.2d 440, rehearing denied. Election Law 536

6. Admission of evidence

Even if issue of whether voter who cast vote for person not on ballot actually meant to vote for unsuccessful candidate had been timely raised before municipal Election Commission, Circuit Court erred in taking voter’s testimony as to her intent; Circuit Court was functioning as appellate court with respect to election challenge, and voter testimony of such nature would not even be admissible before election commission. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 552(4)

Voter testimony is never admissible for purpose of showing that intention of voter was in any way different from what plainly appears on face of ballot; ballot itself constitutes highest and best evidence of will of elector. Butler v. Town of Edgefield (S.C. 1997) 328 S.C. 238, 493 S.E.2d 838. Election Law 552(4)

7. New election

Circuit court lacked authority, in affirming municipal election commission’s order for new election for town mayor in which candidate won by a one vote margin, to modify commission’s order to require a de novo election, with the filing period for candidates to be reopened, as court had statutory authority only to order a new election as to the parties concerned. Armstrong v. Atlantic Beach Mun. Election Com’n (S.C. 2008) 380 S.C. 47, 668 S.E.2d 400. Election Law 576

When one of two voting machines in precinct failed to record any votes in election for municipal office, and less votes were accounted for than the number on the poll, remedy was an entirely new election between all three runoff candidates open to all qualified voters in all precincts. Broadhurst v. City of Myrtle Beach Election Com’n (S.C. 2000) 342 S.C. 373, 537 S.E.2d 543, rehearing denied. Election Law 560(4)

Circuit court, which ordered new election after one of two voting machines in precinct failed to record any votes in runoff election for municipal office, should not have declared candidate with most votes in first election the winner of the election, given that remedy was entirely new election between all three runoff candidates open to all qualified voters in all precincts, and therefore it was possible for candidate to lose in new election. Broadhurst v. City of Myrtle Beach Election Com’n (S.C. 2000) 342 S.C. 373, 537 S.E.2d 543, rehearing denied. Election Law 560(4)

When one of two voting machines in precinct failed to record any votes in election for municipal office and remedy was entirely new election between all three runoff candidates open to all qualified voters in all precincts, city council candidate who came in first in initial runoff election was a “party concerned,” given that it was possible for candidate to lose in new election, and therefore in order to be elected to one of the two seats on City Council, he had to participate in the new election. Broadhurst v. City of Myrtle Beach Election Com’n (S.C. 2000) 342 S.C. 373, 537 S.E.2d 543, rehearing denied. Election Law 560(1)

**SECTION 5‑15‑140.** Contesting election results; appeal from decision of municipal election commission.

 Within ten days after notice of the decision of the municipal election commission, any party aggrieved thereby may appeal from such decision to the court of common pleas. Notice of appeal shall be served on the opposing parties or their attorneys and filed in the office of the clerk of court within ten days. The notice of appeal shall act as a stay of further proceedings pending the appeal.

HISTORY: 1962 Code Section 47‑102; 1975 (59) 692.

LIBRARY REFERENCES

Elections 278.

Westlaw Key Number Search: 144k278.

C.J.S. Elections Sections 258 to 260.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 15, Duties.

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.

NOTES OF DECISIONS

In general 1

1. In general

To serve the ends of justice by ensuring that the election challenge would be heard in the proper appellate forum, the Supreme Court would exercise its authority to transfer a matter to the appropriate appellate court, i.e., the circuit court, upon determining on certiorari review of decision of State Election Commission, that appeal, from judgment in municipal election dispute that was decided by county board of elections and voter registration to which a town had transferred its authority to conduct municipal elections, should have been filed in circuit court rather than with State Election Commission. In re November 4, 2008 Bluffton Town Council Election (S.C. 2009) 385 S.C. 632, 686 S.E.2d 683. Election Law 571

Unsuccessful candidates’ claims, that circuit court erred in affirming municipal election commission’s denial of their election protests because constitutional and statutory right to secret ballot of 28 persons who voted by absentee ballot allegedly was violated and commission was required by statute to order a new election due to alleged irregularities based on the number of voters who signed the poll list, were not preserved for appellate review; candidates failed to raise either issue in their notice of contest letters, issue of absentee ballot secrecy was not raised to commission or to circuit court, and issues related to signing of poll list were not raised to commission. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 573

The circuit court, sitting in an appellate capacity, does not conduct a de novo hearing or take testimony regarding the decision of a municipal election commission; circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence. Taylor v. Town of Atlantic Beach Election Com’n (S.C. 2005) 363 S.C. 8, 609 S.E.2d 500, rehearing denied. Election Law 576; Election Law 577

Circuit court properly refused to hold de novo hearing on challenger’s appeal from city election commission decision certifying incumbent as winner of election for city council seat; challenger was neither denied registration of his name on registration books, nor did he challenge incumbent’s qualifications in writing to board of registration, but rather, challenger, who claimed that incumbent was not resident of district, appealed decision of municipal election commission. Blair v. City of Manning (S.C. 2001) 345 S.C. 141, 546 S.E.2d 649. Election Law 560(1)

The circuit court lacks authority to conduct full hearings on election challenges because the circuit court is by statute an appellate court in such circumstances. Blair v. City of Manning (S.C. 2001) 345 S.C. 141, 546 S.E.2d 649. Election Law 560(1)

Where petition for commission for election on question of incorporation of subdivision on its face met requirements of Section 47‑102, Secretary of State was required to issue commission; fact that voters of proposed town were registered in different precincts was of no legal consequence. Green v. Thornton (S.C. 1975) 265 S.C. 436, 219 S.E.2d 827. Mandamus 74(2)

**SECTION 5‑15‑145.** Transfer of authority to conduct municipal elections to county elections commission.

 (A) Municipalities are authorized to transfer authority for conducting municipal elections to the county elections commission. County elections commissions are authorized to conduct municipal elections.

 (B) As a condition of the transfer of authority to conduct elections pursuant to this section, the governing bodies of the municipality and the county must agree to the terms of the transfer and enact ordinances embodying the terms of that agreement. The municipal ordinance must state what authority is being transferred and the county ordinance must accept the authority being transferred.

 (C) When the total responsibility for the conduct of a municipal election is transferred to a county election commission, pursuant to the provisions of this section, the municipal election commission is abolished.

 (D) If the municipality, by ordinance transfers a portion of the responsibilities for the conduct of a municipal election to a county election commission, the municipality shall not abolish the municipal election commission.

 (E) A municipality which by ordinance transfers authority for conducting municipal elections to the county election commission under this section may by ordinance set the filing dates for municipal offices, and the date by which candidates must be certified to the appropriate authority to be placed on the ballot, to run concurrently with the filing dates set by law for countywide and less than countywide offices or other filing dates as may be mutually agreed upon between the municipality and the county election commission.

HISTORY: 1992 Act No. 289, Section 1; 1996 Act No. 443, Section 1; 1998 Act No. 412, Section 3.

LIBRARY REFERENCES

Elections 24.

Westlaw Key Number Search: 144k24.

C.J.S. Elections Section 190.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 15, Duties.

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

S.C. Jur. Evidence Section 11, Judicial Notice of Local Ordinances.

NOTES OF DECISIONS

In general 1

1. In general

On granting certiorari to review the question whether State Election Commission had subject matter jurisdiction to hear an appeal from decision of county board of elections and voter registration to hold a new election for two seats on town council, it was appropriate for Supreme Court to take judicial notice of county’s ordinance accepting transfer from town of authority to conduct municipal elections. In re November 4, 2008 Bluffton Town Council Election (S.C. 2009) 385 S.C. 632, 686 S.E.2d 683. Evidence 32

As a general matter, municipal election disputes are to be adjudicated by municipal election commissions, and appeals from municipal election commissions are heard by the circuit court, but municipalities that choose not to establish their own election commissions are authorized to transfer the authority to conduct their municipal elections to the county election commission. In re November 4, 2008 Bluffton Town Council Election (S.C. 2009) 385 S.C. 632, 686 S.E.2d 683. Election Law 532

**SECTION 5‑15‑150.** Oath of office for mayor and councilmen.

 The mayor and councilmen, before entering upon the duties of their respective offices, shall take the oath prescribed by the Constitution and also the following oath, to wit:

 “As mayor (councilman) of the municipality of \_\_\_\_\_\_\_\_\_\_ I will equally, fairly, and impartially, to the best of my ability and skill, exercise the trust reposed in me, and I will use my best endeavors to preserve the peace and carry into effect according to law the purposes for which I have been elected. So help me God.”

HISTORY: 1962 Code Section 47‑103; 1975 (59) 692.

LIBRARY REFERENCES

Municipal Corporations 144.

Westlaw Key Number Search: 268k144.

C.J.S. Municipal Corporations Section 358.

**SECTION 5‑15‑160.** Term of office of commissioner of public works may be extended.

 Notwithstanding any other provisions of law, a municipal council is authorized by ordinance to provide that the term of office of any commissioner of public works of any municipality of this State which now expires at a time other than the time of the general election for municipal officials in such municipality shall be extended until fifteen days after the general election for municipal officials of such municipality next succeeding the expiration of such commissioner’s present term of office.

 No municipal council shall adopt an ordinance as provided by this section unless it has been requested by the Board of Commissioners of Public Works of such municipality.

 The term of office of each succeeding commissioner shall be for a period of six years, and until his successor is elected and qualified.

HISTORY: 1981 Act No. 169, Section 2.

CROSS REFERENCES

Election of commissioners of public works, generally, see Sections 5‑31‑210, 5‑31‑220.

LIBRARY REFERENCES

Municipal Corporations 149(2).

Westlaw Key Number Search: 268k149(2).

C.J.S. Municipal Corporations Sections 361 to 363.

**SECTION 5‑15‑170.** Ratification of actions of commissioner.

 Any and all actions taken by a commissioner of public works whose term of office expired prior to the adoption of the ordinance provided for by Section 5‑15‑160 are ratified, validated and confirmed.

HISTORY: 1981 Act No. 169, Section 3.

LIBRARY REFERENCES

Municipal Corporations 149(2).

Westlaw Key Number Search: 268k149(2).

C.J.S. Municipal Corporations Sections 361 to 363.