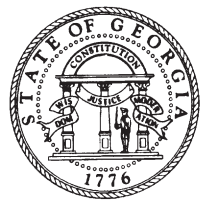
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With Provision for Subsequent Pocket Parts

Prepared by

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and
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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 1st day of July, in the year of our Lord Two Thousand and Twenty-three and of the Independence of the United States of America the Two Hundred and Forty-Seventh.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume cumulates and replaces the 2019 edition of Volume 18 of the Official Code of Georgia Annotated, as supplemented by the 2022 Cumulative Supplement. The 2019 Volume 18 and its 2022 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 21 by the General Assembly through the 2023 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2023. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2021, 2022, and 2023 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2021 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Prohibition against campaign activities by officers and employees of state while traveling in vehicles for which state is paying transportation mileage, § 50-19-8.

Law reviews.

For article, "An Analysis of the Georgia Election Code," see 1 Ga. St. B. J. 299 (1965).

For article, "Reasonable Restrictions on the Franchise: Georgia's Voter Identification Act of 2006," see 63 Mercer L. Rev. 1129 (2012).

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For article, "Racially Neutral in Form, Racially Discriminatory in Fact: The Implications for Voting Rights of Giving Disproportionate Racial Impact the Constitutional Importance It Deserves," see 71 Mercer L. Rev. 811 (2020).

For comment, "Voter Suppression Post-*Shelby*: Impacts and Issues of Voter Purge and Voter ID Laws," see 71 Mercer L. Rev. 857 (2020).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

For article, "SB 221: The Creation of Election Leadership Committees," see 38 Ga. St. U.L. Rev. 155 (2021).

JUDICIAL DECISIONS

Constitutional guarantees and protections. — Although the federal Constitution confers no right to vote as such, it does guarantee to every citizen the right to participate on a fair and equal basis with all other citizens in the electoral process, once a state has chosen to select its public officials by popular vote. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

The right to vote, which encompasses such distinct concerns as the citizen's opportunity to cast a vote, the community's chance to be represented within a larger polity in proportion to its population, the racial group's ability to prevent the purposeful dilution of its voting power, the candidate's capacity to ensure a place on the ballot, and the constituent's chance to contribute to a chosen candidate implicates fundamental U.S. Const., amend. 1 and due process interests and is therefore protected, at least in part, by the due process and equal protection guarantees

of U.S. Const., amend. 14 against state encroachment. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

The interests encompassed by the right to vote are among the liberties protected against state infringement by the due process guarantee. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

The right to vote is clearly fundamental, and is protected by both the due process and equal protection guarantees of U.S. Const., amend. 14. In either case, any alleged infringement of the right to vote must be carefully and meticulously scrutinized, for a state has precious little leeway in making it difficult for citizens to vote. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Denial or abridgment of voting rights. — If the right to vote is denied altogether or abridged in a manner which renders the electoral process fundamentally unfair, a violation of due process may be found. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Discrimination amongst members of electorate. — If the state discriminates in favor of some members of the electorate and against others, the equal protection guarantee may have been violated. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Conduct favoring "ins" against "outs". — When so fundamental a right as voting is concerned, the courts have not hesitated to conclude that any conduct which favors the "ins" against the "outs" is impermissible. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

State may regulate exercise of suffrage. — A citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. This right is not absolute, for the states have the power to determine the conditions under which the right of suffrage may be exercised, absent the discrimination which the Constitution condemns. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Election laws to be strictly construed. — The election law is in derogation of the common law and must be strictly construed. Schloth v. Smith, 134 Ga. App. 529, 215 S.E.2d 292, 1975 Ga. App. LEXIS 2070 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Segregation of ballots by race not authorized. — The Election Code clearly and most definitely does not authorize the practice of segregating the ballots used by Negroes and white persons. 1965-66 Op. Att'y Gen. No. 66-182.

Mental retardation not ground for removal of elector from electors list. — There is no statutory or constitutional provisions which would permit removal of an elector from the electors list on the ground that the elector is mentally retarded; in fact, under O.C.G.A. § 37-4-104, the contrary is true with respect to those mentally retarded electors receiving treatment. 1981 Op. Att'y Gen. No. 81-11.

RESEARCH REFERENCES

ALR.

Treating of voters by candidate for office as violation of corrupt practices or similar act, 2 A.L.R. 402.

Constitutionality and construction of statutes providing for proportional representation, or other system of preferential voting, in public elections, 110 A.L.R. 1521; 123 A.L.R. 252.

"At-Large" elections as violation of § 2 of Voting Rights Act of 1965 (42 USC § 1973), 92 A.L.R. Fed. 824.

CHAPTER 1

CONGRESSIONAL DISTRICTS

Sec.
21-1-1. [Reserved] Definitions and descriptions for use in designating congressional districts.
21-1-2. Designation of congressional districts.
21-1-3. Continuation in office, dismissal, or appointment of members of constitutional or statutory boards or bodies for which membership based on residency within congressional district.

Law reviews.
For article, "The History of Redistricting in Georgia," see 52 Ga. L. Rev. 1060 (2018).

21-1-1. [Reserved] Definitions and descriptions for use in designating congressional districts.

History.
Code 1933, § 34-1801, enacted by Ga. L. 1971, Ex. Sess., p. 89, § 1; Code 1933, § 34-1802, enacted by Ga. L. 1981, Ex. Sess., p. 131, § 1; Code 1981, § 21-2-3; Ga. L. 1991, Ex. Sess., p. 92, § 1; Ga. L. 1992, p. 335, § 1; Ga. L. 1992, p. 833, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1998, p. 295, § 1; Code 1981, § 21-1-1, as redesignated Ga. L. 2001, Ex. Sess., p. 335, §§ 1, 4; repealed by Ga. L. 2011, Ex. Sess., p. 208, § 3/HB 20EX, effective September 6, 2011.

Editor's notes.
Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

Ga. L. 2011, Ex. Sess., p. 208, § 3/HB 20EX, reserved the designation of this Code Section, effective September 6, 2011.

21-1-2. Designation of congressional districts.

The General Assembly shall by general law divide the state into 14 congressional districts. There shall be elected one representative to the Congress of the United States from each such district by the electors of such district.

History.
Code 1981, § 21-1-2, enacted by Ga. L. 2011, Ex. Sess., p. 208, § 4/HB 20EX.

Cross references.
Apportionment of House of Representatives and Senate, T. 28, C. 2.

Editor's notes.
This Code section formerly pertained to designation of congressional districts. The former Code section was based on Orig. Code 1863, § 44; Code 1868, § 42; Ga. L. 1872, p. 12, § 1; Code 1873, § 40; Code 1882, § 40; Ga. L. 1890-91, p. 193, §§ 1-3; Civil Code 1895, § 31; Ga. L. 1905, p. 52, § 2; Ga. L. 1905, p. 54, § 2; Ga. L. 1905, p. 55, § 2; Ga. L. 1905, p. 57, § 2; Ga. L. 1905, p. 58, § 2; Ga. L. 1905, p. 60, § 2; Ga. L. 1905, p. 62, § 1; Ga. L. 1905, p. 63, § 2; Civil Code 1910, § 33; Ga. L. 1911, p. 146, § 1; Ga. L. 1912, p. 38, § 1; Ga. L. 1912, p. 41, § 1; Ga. L. 1912, p. 108, § 1; Ga. L. 1914, p. 23, § 2; Ga. L. 1914, p. 27,

§ 1; Ga. L. 1914, p. 29, § 1; Ga. L. 1914, p. 33, § 1; Ga. L. 1916, p. 17, § 1; Ga. L. 1917, p. 41, § 1; Ga. L. 1917, p. 44, § 1; Ga. L. 1918, p. 102, § 1; Ga. L. 1918, p. 106, § 1; Ga. L. 1919, p. 68, § 1; Ga. L. 1920, p. 34, § 1; Ga. L. 1920, p. 38, § 1; Ga. L. 1920, p. 48, § 1; Ga. L. 1920, p. 52, § 1; Ga. L. 1921, p. 88, § 1; Ga. L. 1924, p. 39, § 1; Ga. L. 1931, p. 46, §§ 1, 2; Code 1933, § 34-2301; Ga. L. 1964, p. 478, § 1; Code 1933, § 34-1801, enacted by Ga. L. 1971, Ex. Sess., p. 89, § 1; Ga. L. 1972, p. 235, § 1; Ga. L. 1981, Ex. Sess., p. 131, § 1; Code 1981, § 21-2-4; Ga. L. 1991, Ex. Sess., p. 92, § 2; Ga. L. 1992, p. 335, § 2; Ga. L. 1992, p. 833, § 2; Ga. L. 1993, p. 863, § 1; Code 1981, § 21-1-2, as redesignated by Ga. L. 2001, Ex. Sess., p. 335, §§ 2-4; Ga. L. 2005, p. 728, §§ 1, 2/HB 499 and was repealed by Ga. L. 2011, Ex. Sess., p. 208, § 4/HB 20EX, effective September 6, 2011.

Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

Ga. L. 2021, Ex. Sess., p. SB 2EX, § 1/SB 2EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Redistricting Act of 2021.'"

Ga. L. 2021, Ex. Sess., p. SB 2EX, § 2/SB 2EX, not codified by the General Assembly, contains the description of the fourteen Congressional districts and related definitions, effectiveness, and applicability provisions.

Ga. L. 2021, Ex. Sess., p. SB 2EX, § 3/SB 2EX, not codified by the General Assembly, provides that: "The description of Congressional Districts 1 through 14 provided for pursuant to this Act shall supersede and replace the description of Congressional Districts 1 through 14 provided in an Act approved September 6, 2011 (Ga. L. 2011, Ex. Sess., p. 208)."

Ga. L. 2021, Ex. Sess., p. SB 2EX, § 5/SB 2EX, not codified by the General Assembly, provides for the repeal of Ga. L. 2011, Ex. Sess., p. 208, § 2/HB 20EX, effective December 30, 2021.

Law reviews.

For article, "Local Government Tort Liability: The Summer of '92," see 9 Ga. St. U. L. Rev. 405 (1993).

JUDICIAL DECISIONS

Unconstitutionality of Second Congressional District. — The Second Congressional District was drawn to segregate voters according to their race and so violated equal protection. Johnson v. Miller, 922 F. Supp. 1552, 1995 U.S. Dist. LEXIS 22575 (S.D. Ga. 1995).

Unconstitutionality of Eleventh Congressional District. — Race was the predominant, overriding factor explaining the General Assembly's decision to attach to the Eleventh District various appendages containing dense majority-black populations, thereby giving rise to a valid equal protection claim under the principles announced in Shaw v. Reno, 509 U.S. 630, 113 S. Ct. 2819, 125 L. Ed. 2d 511 (1993), and the district could not be sustained as narrowly tailored to serve a compelling governmental interest. Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762, 1995 U.S. LEXIS 4462 (1995).

Proof of improper assignment of voters. — Parties alleging that a state has assigned voters on the basis of race are neither confined in their proof to evidence regarding the district's geometry and makeup nor required to make a threshold showing of bizarreness. Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762, 1995 U.S. LEXIS 4462 (1995).

RESEARCH REFERENCES

C.J.S.

16 C.J.S., Constitutional Law, § 73 et seq.

ALR.

Validity and construction of statute or ordinance relating to distribution of advertising matter, 114 A.L.R. 1446.

Propriety of using census data as basis for governmental regulations or activities — state cases, 56 A.L.R.5th 171.

Application of constitutional "compactness requirement" to redistricting, 114 A.L.R.5th 311.

State court jurisdiction over congressional redistricting disputes, 114 A.L.R.5th 387.

21-1-3. Continuation in office, dismissal, or appointment of members of constitutional or statutory boards or bodies for which membership based on residency within congressional district.

(a) Any member of any constitutional or statutory board or body who:

(1) Is in office on January 1 of the year following the year in which members of Congress are first elected from Georgia under any congressional redistricting Act; and

(2) Was appointed or otherwise selected (other than by election by the people) on the basis of residency within a congressional district

shall have his or her eligibility or ineligibility to continue to serve determined as provided in this subsection. Such member shall serve out the term for which the member was appointed and shall represent the congressional district in which the member resides unless more members of the board or body than authorized by the applicable constitutional provision or statute reside within the same congressional district. In the event any congressional district in which there are residing therein more members of any such board or body than the number of members specified by the applicable constitutional provision or statute, the appointing authority shall designate which member or members representing the congressional district shall continue to serve as a member or members of the board or body. Any member not designated for continued membership shall cease to hold office as of the date of such designation by the appointing authority. If a congressional district is not represented on a board or body as specified by the applicable constitutional provision or statute, a vacancy shall exist. Such vacancy shall be filled by the appointing authority appointing to the board or body a member or members from the congressional district which does not have sufficient representation. In the case of an appointment to fill a vacancy created by the displacement of a member from a congressional district on the basis of residency, the initial appointment shall be for a term ending on the date on which the term of the member removed by the appointing authority in accordance with the foregoing requirement would have ended. The initial term of all other appointments to fill a

vacancy as provided for in this Code section shall be set by the appointing authority in accordance with the schedule of expiration dates established by law for the terms of members of the board or body.

(b) The same rules provided for in subsection (a) of this Code section shall be applied insofar as may be practicable in the event a court of competent jurisdiction enters an order changing the composition of Georgia's congressional districts. In such event, such rules shall be applied as of January 1 of the year following the year in which members of Congress are first elected from Georgia under such court order. If such a court order is stayed, the application of this subsection shall likewise be stayed. If such a court order is subject to appeal but is not stayed and congressional elections are held under such court order, the application of this subsection likewise shall not be stayed.

History.

Code 1981, § 21-1-3, enacted by Ga. L. 2011, Ex. Sess., p. 208, § 5/HB 20EX.

Editor's notes.

Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

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21-2-593. Failure of law enforcement officers to remove obstacles or to maintain order at polling places; hindrance or delay of poll officers by law enforcement officers.
21-2-594. Offenses by printers of ballots.
21-2-595. [Reserved] Disposition of alcoholic beverages on primary or election days.
21-2-596. Failure of public or political officer to perform duty.
21-2-597. Intentional interference with performance of election duties.
21-2-598. Violations of chapter.
21-2-599. Punishment for misdemeanors under chapter.
21-2-600. Punishment for felonies under chapter.
21-2-601. Use of list of electors for commercial purposes prohibited.
21-2-602. Compensation for soliciting persons to register to vote prohibited.
21-2-603. Conspiracy to commit election fraud.
21-2-604. Criminal solicitation to commit election fraud; penalties.

Cross references.

Subpoena and audit of voting records, § 35-3-4.5.

Referendum for ratification or rejection of annexation resolution, § 36-36-58.

Elections relating to incurring of bonded debt by counties, municipalities, or other political subdivisions, § 36-82-1 et seq.

Special election for filing of vacancies in office of district attorney, § 45-5-3.2.

Administrative rules and regulations.

Registration of electors, Official Compilation of the Rules and Regulations of the State of Georgia, State Election Board, Subject 183-1-6.

Election districts and polling places, Official Compilation of the Rules and Regulations of the State of Georgia, State Election Board, Subject 183-1-7.

Certification of voting systems, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Secretary of State, Elections Division, Subject 590-8-1.

Help America Vote Act of 2002 Provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Secretary of State, Elections Division, Subject 590-8-2.

Law reviews.

For article discussing the evolution of municipal annexation law in Georgia in light of Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1970), see 5 Ga. L. Rev. 499 (1971).

For article, "Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks," see 67 Emory L.J. 545 (2018).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-101 et seq., former Code 1933, § 34-1514 and former Title 21, Chapter 3 are included in the annotations for this chapter.

Federal Constitution protects right of all qualified citizens to vote, in state as well as in federal elections. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Federal Constitution protects right of all qualified citizens to vote, in state as

well as in federal elections. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Election administration is federally protected, although generally a state concern. — The administration of elections is generally a matter of state concern, but United States Supreme Court decisions leave no room for doubt that voting rights are, at bottom, federally protected. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Fundamental liberties must not be obstructed by election practices. — The "liberty" protected from state impairment by the due process clause of U.S. Const., amend. 14 includes the freedoms of speech and association guaranteed by U.S. Const., amend. 1. These freedoms under U.S. Const., amend. 1 extend to political activities such as running for elective office. State election practices must therefore serve legitimate state interest narrowly and fairly to avoid obstructing and diluting these fundamental liberties. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Voting restrictions strike at heart of representative government. — The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Infringement of right to suffrage carefully scrutinized. — Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Right to have votes counted. — Qualified citizens not only have a constitutionally protected right to vote, but also the right to have their votes counted, a right which can neither be denied outright, nor destroyed by alteration of ballots, nor diluted by ballot box stuffing. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Other rights illusory if right to vote undermined. — No right is more precious in a free country than that of having a voice in the election of those who make the laws under which we, as good citizens, must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981) (decided under former Code 1933, § 34-1514).

Illegal votes ground for contesting municipal election. — Although the Georgia Election Code is not applicable by its terms to municipal elections under former Code 1933, § 34-102 (see now O.C.G.A. § 21-2-15), in the absence of any statutory grounds for contest in former chapter 3, the ground for contest in former Code 1933, § 34-1703 (see now O.C.G.A. § 21-2-522(3)) is a good ground of contest in a municipal election. Davidson v. Bryan, 242 Ga. 282, 248 S.E.2d 657, 1978 Ga. LEXIS 1171 (1978) (decided under former Code 1933).

Ga. L. 1964, Ex. Sess., p. 26 is a comprehensive law designed to regulate all elections in the state except municipal elections, and repeals any provision inconsistent with it. League of Women Voters v. Board of Elections, 237 Ga. 40, 227 S.E.2d 225, 1976 Ga. LEXIS 1139 (1976) (decided under former Code 1933, § 34-101 et seq.).

Ga. L. 1964, Ex. Sess., p. 26, being a general comprehensive reorganization of election law, must control in elections legalizing alcoholic beverages. Buttrill v. Thomas, 126 Ga. App. 498, 191 S.E.2d 119, 1972 Ga. App. LEXIS 1194 (1972) (decided under former Code 1933, § 34-101 et seq.).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34-1508 are included in the annotations for this article.

Ordinary (now judge of the probate court) should conduct election for justice of the peace (now magistrate) and should certify the returns to the Secretary of State. 1967 Op. Att'y Gen. No. 67-125 (decided under former Code 1933, § 34-1508).

ARTICLE 1

GENERAL PROVISIONS

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34-101 are included in the annotations for this article.

Referendum required by special Act must be called and held at time specified in Act. See 1969 Op. Att'y Gen. No. 69-301 (decided under former Code 1933, § 34-101 et seq.).

Presentation of more than one question in special election. — More than one question may be presented to municipal voters in a special election properly called for that purpose, absent specific limitations derived from the authority under which the question is to be submitted. 1976 Op. Att'y Gen. No. U76-16 (decided under former Ga. Law 1968, p. 885 et seq.).

RESEARCH REFERENCES

ALR.

Power to enjoin holding of election, 70 A.L.R. 733.

Constitutionality and construction of statutes providing for proportional representation, or other system of preferential voting, in public elections, 110 A.L.R. 1521; 123 A.L.R. 252.

21-2-1. Short title; references to Chapter 3 of Title 21 or the municipal election code.

(a) This chapter shall be known and may be cited as the "Georgia Election Code."

(b) References in general and local law to the "Georgia Municipal Election Code," the "Municipal Election Code," or "Chapter 3 of Title 21" shall be deemed to refer to this chapter.

History.

Code 1933, § 34-101, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Law reviews.

For article, "Constitutional Text, Founding-Era History, and the Independent-State-Legislature Theory," see 57 Ga. L. Rev. 539 (2023).

RESEARCH REFERENCES

ALR.
What changes in voting practices or procedures must be precleared under § 5 of Voting Rights Act of 1965 (42 USCA § 1973c) — Supreme Court cases, 146 A.L.R. Fed. 619.

21-2-2. Definitions.

As used in this chapter, the term:

(.1) "Activities of daily living" includes eating, toileting, grooming, dressing, shaving, transferring, and other personal care services.

(.2) "Attendant care services" means services and supports furnished to an individual with a physical disability, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health related functions through hands-on assistance, supervision, or cuing.

(1) "Ballot" means "official ballot" or "paper ballot" and shall include the instrument, whether paper, mechanical, or electronic, by which an elector casts his or her vote.

(2) "Ballot marking device" means a pen, pencil, or similar writing tool, or an electronic device designed for use in marking paper ballots in a manner that is detected as a vote so cast and then counted by ballot scanners.

(2.1) "Ballot scanner" means an electronic recording device which receives an elector's ballot and tabulates the votes on the ballot by its own devices, also known as a "tabulating machine."

(3) "Call" or "the call," as used in relation to special elections or special primaries, means the affirmative action taken by the responsible public officer to cause a special election or special primary to be held. The date of the call shall be the date of the first publication in a newspaper of appropriate circulation of such affirmative action.

(3.1) "Campaign material" means any newspaper, booklet, pamphlet, card, sign, paraphernalia, or any other written or printed matter referring to:

(A) A candidate whose name appears on the ballot in a primary or election;

(B) A referendum which appears on the ballot in a primary or election; or

(C) A political party or body which has a nominee or nominees on the ballot in a primary or election.

Campaign material shall not include any written or printed matter that is used exclusively for the personal and private reference of an individual elector during the course of voting.

(4) "Custodian" means the person charged with the duty of testing and preparing voting equipment for the primary or election and with instructing the poll officers in the use of same.

(4.1) "Direct recording electronic" or "DRE" voting equipment means a computer driven unit for casting and counting votes on which an elector touches a video screen or a button adjacent to a video screen to cast his or her vote. Such term shall not encompass ballot marking devices or electronic ballot markers.

(5) "Election" ordinarily means any general or special election and shall not include a primary or special primary unless the context in which the term is used clearly requires that a primary or special primary is included.

(6) "Election district" is synonymous with the terms "precinct" and "voting precinct."

(7) "Elector" means any person who shall possess all of the qualifications for voting now or hereafter prescribed by the laws of this state, including applicable charter provisions, and shall have registered in accordance with this chapter.

(7.1) "Electronic ballot marker" means an electronic device that does not compute or retain votes; may integrate components such as a ballot scanner, printer, touch screen monitor, audio output, and navigational keypad; and uses electronic technology to independently and privately mark a paper ballot at the direction of an elector, interpret ballot selections, communicate such interpretation for elector verification, and print an elector verifiable paper ballot.

(8) "General election" means an election recurring at stated intervals fixed by law or by the respective municipal charters; and the words "general primary" mean a primary recurring at stated intervals fixed by law or by the respective municipal charters.

(9) "Health related functions" means functions that can be delegated or assigned by licensed health care professionals under state law to be performed by an attendant.

(10) "Independent" means a person unaffiliated with any political party or body and includes candidates in a special election for a partisan office for which there has not been a prior special primary.

(11) "Managers" means the chief manager and the assistant managers required to conduct primaries and elections in any precinct in accordance with this chapter.

(12) "Municipal office" means every municipal office to which persons can be elected by a vote of the electors under the laws of this state and the respective municipal charters.

(13) "Municipality" means an incorporated municipality.

(14) "Nomination" means the selection, in accordance with this chapter, of a candidate for a public office authorized to be voted for at an election.

(15) "November election" means the general election held on the Tuesday next following the first Monday in November in each even-numbered year.

(16) "Numbered list of voters" means one or more sheets of uniform size containing consecutively numbered blank spaces for the insertion of voters' names at the time of and in the order of receiving their ballots or number slips governing admissions to the voting machines.

(17) "Oath" shall include affirmation.

(18) "Official ballot" means a ballot, whether paper, mechanical, or electronic, which is furnished by the superintendent or governing authority in accordance with Code Section 21-2-280, including paper ballots that are read by ballot scanners.

(19) "Official ballot label" means a ballot label prepared in accordance with Article 9 of this chapter and delivered by the superintendent to the poll officers in accordance with Code Section 21-2-328.

(19.1) "Optical scanning voting system" means a system employing paper ballots on which electors cast votes with a ballot marking device or electronic ballot marker after which votes are counted by ballot scanners.

(20) "Paper ballot" or "ballot" means the forms described in Article 8 of this chapter.

(21) "Party nomination" means the selection by a political party, in accordance with this chapter, of a candidate for a public office authorized to be voted for at an election.

(22) Reserved.

(23) "Political body" or "body" means any political organization other than a political party.

(24) "Political organization" means an affiliation of electors organized for the purpose of influencing or controlling the policies and conduct of government through the nomination of candidates for public office and, if possible, the election of its candidates to public office, except that the term "political organization" shall not include a "subversive organization" as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the "Sedition and Subversive Activities Act of 1953."

(25) "Political party" or "party" means any political organization which at the preceding:

(A) Gubernatorial election nominated a candidate for Governor and whose candidate for Governor at such election polled at least 20 percent of the total vote cast in the state for Governor; or

(B) Presidential election nominated a candidate for President of the United States and whose candidates for presidential electors at such election polled at least 20 percent of the total vote cast in the nation for that office.

(26) "Poll officers" means the chief manager, assistant managers, and clerks required to conduct primaries and elections in any precinct in accordance with this chapter.

(27) "Polling place" means the room provided in each precinct for voting at a primary or election.

(28) "Precinct" is synonymous with the term "voting precinct" and means a geographical area, established in accordance with this chapter, from which all electors vote at one polling place.

(29) "Primary" means any election held for the purpose of electing party officers or nominating candidates for public offices to be voted for at an election.

(30) "Public office" means every federal, state, county, and municipal office to which persons can be elected by a vote of the electors under the laws of this state or the respective municipal charters, except that the term shall not include the office of soil and water conservation district supervisor.

(31) "Question" means a brief statement of such constitutional amendment, charter amendment, or other proposition as shall be submitted to a popular vote at any election.

(32) "Residence" means domicile.

(32.1) "Scanning ballot" means a printed paper ballot designed to be marked by an elector with a ballot marking device or electronic ballot marker or a blank sheet of paper designed to be used in a ballot marking device or electronic ballot marker, which is then inserted for casting into a ballot scanner.

(33) "Special election" means an election that arises from some exigency or special need outside the usual routine.

(34) "Special primary" means a primary that arises from some exigency or special need outside the usual routine.

(35) "Superintendent" means:

(A) Either the judge of the probate court of a county or the county board of elections, the county board of elections and registration, the joint city-county board of elections, or the joint city-county board of elections and registration, if a county has such;

(B) In the case of a municipal primary, the municipal executive committee of the political party holding the primary within a municipality or its agent or, if none, the county executive committee of the political party or its agent;

(C) In the case of a nonpartisan municipal primary, the person appointed by the proper municipal executive committee;

(D) In the case of a municipal election, the person appointed by the governing authority pursuant to the authority granted in Code Section 21-2-70; and

(E) In the case of the State Election Board exercising its powers under subsection (f) of Code Section 21-2-33.1, the individual appointed by the State Election Board to exercise the power of election superintendent.

(36) "Swear" shall include affirm.

(37) "Violator" means any individual, partnership, committee, association, corporation, limited liability company, limited liability partnership, professional corporation, trust, enterprise, franchise, joint venture, political party, political body, candidate, campaign committee, political action committee or any other political committee or business entity, or any governing authority that violates any provision of this chapter.

(38) Reserved.

(39) "Voter" is synonymous with the term "elector."

(40) "Voting machine" is a mechanical device on which an elector may cast a vote and which tabulates those votes by its own devices and is also known as a "lever machine."

(41) "Write-in ballot" means the paper or other material on which a vote is cast for persons whose names do not appear on the official ballot or ballot labels.

History.

Code 1933, § 34-103, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 1; Ga. L. 1978, p. 1004, §§ 1, 2; Ga. L. 1979, p. 964, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 696, § 1; Ga. L. 1988, p. 964, § 1; Ga. L. 1989, p. 10, § 1; Ga. L. 1994, p. 279, § 1; Ga. L. 1997, p. 590, § 1; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 1, 2, 25, 26; Ga. L. 2001, Ex. Sess., p. 325, § 1; Ga. L. 2002, p. 598, §§ 1-1, 2-1; Ga. L. 2003, p. 151, § 1; Ga. L. 2003, p.

517, § 1; Ga. L. 2005, p. 253, § 1/HB 244; Ga. L. 2006, p. 888, § 1/HB 1435; Ga. L. 2010, p. 914, § 1/HB 540; Ga. L. 2016, p. 173, § 1/SB 199; Ga. L. 2019, p. 7, § 1/HB 316; Ga. L. 2021, p. 14, § 3/SB 202; Ga. L. 2022, p. 352, § 21/HB 1428.

The 2021 amendment, effective March 25, 2021, deleted "and" at the end of subparagraph (35)(C), substituted "; and" for a period at the end of subparagraph (35)(D), and added subparagraph (35)(E).

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "devices," for "devices;" in paragraph (2.1); and substituted "and navigational" for "and a navigational" in paragraph (7.1).

Cross references.

District supervisors; election procedure for elected supervisors, § 2-6-30.

Probate court's authority to perform duties relating to elections, § 15-9-30.

Editor's notes.

For application of this statute in 2020 and 2021, see Executive Orders 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, and 05.28.21.02.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all

involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, § 183-1-8-.01.

Definition of vote, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Returns of Primaries and Elections, § 183-1-15-.02.

Law reviews.

For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 36, former Code 1933, §§ 34-101 et seq., and 34A-101, and former Code Section 21-3-2 are included in the annotations for this Code section.

County Registrar

County registrar is not prohibited from entering a municipal election because the restriction on municipal registrars under former Code 1933, § 34A-103 does not govern county registrars. Jarnagin v. Harris, 138 Ga. App. 318, 226 S.E.2d 108, 1976 Ga. App. LEXIS 2145 (1976) (decided under former Code 1933, § 34-101 et seq.).

Elector

An elector must be a living person. Hollifield v. Vickers, 118 Ga. App. 229, 162 S.E.2d 905, 1968 Ga. App. LEXIS 1361 (1968).

Political Body

Citizens Party is a "political body" under O.C.G.A. § 21-2-2(19) (see now O.C.G.A. § 21-2-2(23)). Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

Residence

Question of domicile is for jury. — The question of domicile is a mixed question of law and fact and is ordinarily one for a jury, and should not be determined by the court except in plain and palpable cases. Haggard v. Graham, 142 Ga. App. 498, 236 S.E.2d 92, 1977 Ga. App. LEXIS 1674 (1977).

Change of domicile necessary for change of residence. — There must be either the tacit or the explicit intention to change one's domicile before there is a change of legal residence. Haggard v. Graham, 142 Ga. App. 498, 236 S.E.2d 92, 1977 Ga. App. LEXIS 1674 (1977).

If a person leaves the place of domicile temporarily, or for a particular purpose, and does not take up an actual residence elsewhere with the avowed intention of making a change in domicile, the person will not be considered as having changed domicile. Haggard v. Graham, 142 Ga. App. 498, 236 S.E.2d 92, 1977 Ga. App. LEXIS 1674 (1977).

Maintenance of alternate abode not necessarily change in domicile. — One may, for purposes of convenience, maintain a residence at a place not intended as a permanent abode without affecting any change in legal domicile. Haggard v. Graham, 142 Ga. App. 498, 236 S.E.2d 92, 1977 Ga. App. LEXIS 1674 (1977).

Requirements as to domicile. — See Avery v. Bower, 170 Ga. 202, 152 S.E. 239, 1930 Ga. LEXIS 420 (1930) (decided under former Code 1910, § 36).

Candidate improperly deemed ineligible based on residency. — In ruling a candidate was not qualified to be elected as a member of the commission from a Georgia Public Service Commission district because the candidate did not meet the residency requirements of

Residence (Cont'd)

O.C.G.A. § 46-2-1(b), the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring the other applicable portions of § 21-2-217(a) to determine the candidate's residency. Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62, 2008 Ga. LEXIS 854 (2008).

Special Election

County school board referendum. — "Special election" encompasses a county school board referendum. Stiles v. Earnest, 252 Ga. 260, 312 S.E.2d 337, 1984 Ga. LEXIS 661 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

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Special Election

General Considerations

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-101 et seq., and former Code Section 21-3-2 are included in the annotations for this Code section.

Election District

Having two or more polling places within one election district (now precinct) is not authorized by the Georgia Election Code. 1968 Op. Att'y Gen. No. 68-63 (decided under former Code 1933, § 34-101 et seq.).

General Election

Office created too late for general election. — Where a new elective office is created in a county too late for candidates to qualify for the general election, they may be voted upon in a special election. 1970 Op. Att'y Gen. No. U70-120.

Numbered List of Voters

Persons who vote by absentee ballot must be included on a "numbered list of voters". 1971 Op. Att'y Gen. No. U71-127.

Polling Place

Voting from automobile not permitted. — The Election Code does not contemplate voting from automobiles. An elector who is unable to go to the polls should vote by absentee ballot. 1965-66 Op. Att'y Gen. 66-182.

Establishment of polling places. — The governing authority of a municipality is not required to establish a polling place in each district from which a candidate is elected to office, but must establish a polling place in each precinct in the municipality. 1985 Op. Att'y Gen. No. U85-14.

Poll Officers

Municipal official may be poll officer. — No provision of the Georgia Election Code prohibits an elected official of a municipality from serving as a poll officer in a state or national election. 1976 Op. Att'y Gen. No. U76-13.

Residence

Business address does not fulfill residency requirement. — A business address, in and of itself, does not fulfill residency requirements, and an otherwise qualified elector may vote in the election

district containing the business address only when such district also contains the residence as defined by the Election Code. 1968 Op. Att'y Gen. No. 68-293.

Where a person running for office is required to be a resident of the district from which that person is running, the person's business address, in and of itself, would not be sufficient to fulfill the residency requirement. 1968 Op. Att'y Gen. No. 68-293.

Person who moves away from a county and makes that person's home elsewhere forfeits the right to vote in that county. 1965-66 Op. Att'y Gen. No. 65-56.

Wife may register even though not domiciled within state. — A married woman whose husband has his legal residence in Georgia may register to vote in this state even though she is not physically domiciled within the state. 1975 Op. Att'y Gen. No. 75-77.

Separate Precincts

Each ward should be separate election precinct where councilmen elected by ward. — If a municipality requires that each of its councilmen be elected from a different ward and the candidates are elected by the electors residing in that ward, each ward should be a separate election district (now precinct). 1969 Op. Att'y Gen. No. 69-399.

Special Election

An election to fill the unexpired term of an office appears to be a "special election" under O.C.G.A. § 21-2-2(28) (see paragraph (33)) in that it arises outside the usual routine. 1986 Op. Att'y Gen. No. 86-26.

Special election for new elective office. — Where a new elective office is created in a county too late for candidates to qualify for the general election, they may be voted upon in a special election. 1970 Op. Att'y Gen. No. U70-120.

Special election occurs when a superior court judge has died, and a successor is to be selected. 1970 Op. Att'y Gen. No. U70-144.

Date of the call of a special election is the date of its first publication in a newspaper of appropriate circulation. 1980 Op. Att'y Gen. No. 80-27.

County school board is empowered to authorize calling of a school bond referendum which the county election superintendent shall then call by publishing the appropriate notice. 1985 Op. Att'y Gen. No. 85-18.

Registration for special election. — The Election Code does not provide for special registration, but rather for general registration from which a list is compiled to vote in special elections. Therefore, any person who has registered to vote by the close of the fifth day (excluding Sundays or holidays) after the call of a bond election is entitled to vote in that election. 1965-66 Op. Att'y Gen. No. 66-73.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, §§ 1, 8, 22, 25, 27, 97, 98, 191 et seq. 26 Am. Jur. 2d, Elections, §§ 218 et seq., 270, 283 et seq., 305, 329, 330, 331. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 1 et seq..

Am. Jur. Pleading and Practice Forms.

9 Am. Jur. Pleading and Practice Forms, Elections, § 1.

C.J.S.

29 C.J.S., Elections, §§ 36, 38, 39, 136 et seq., 144, 149 et seq., 177, 193, 258, 260, 305 et seq. 62 C.J.S., Municipal Corporations, § 1 et seq., 258, 390 et seq.

ALR.

Validity of percentage of vote or similar requirements for participation by political parties in primary elections, 70 A.L.R.2d 1162.

Validity of write-in vote where candidate's surname only is written in on ballot, 86 A.L.R.2d 1025.

Residence or domicil of student or teacher for purpose of voting, 98 A.L.R.2d 488; 44 A.L.R.3d 797.

21-2-3. Telephone hotline for electors reporting voter intimidation or illegal election activities.

The Attorney General shall have the authority to establish and maintain a telephone hotline for the use of electors of this state to file complaints and allegations of voter intimidation and illegal election activities. Such hotline shall, in addition to complaints and reports from identified persons, also accept anonymous tips regarding voter intimidation and election fraud. The Attorney General shall have the authority to review each complaint or allegation of voter intimidation or illegal election activities within three business days or as expeditiously as possible and determine if such complaint or report should be investigated or prosecuted.

History.

Code 1981, § 21-2-3, enacted by Ga. L. 2021, p. 14, § 4/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need

accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Ga. L. 2006, p. 275, § 2-3/HB 1320, redesignated former Code Section 21-2-3 as present Code Section 16-7-58. Ga. L. 2006, p. 275, § 4-1/HB 1320, reserved the designation of this Code section.

Law reviews.

For article, "SB 202: Revisions to Geor-

gia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

C.J.S. 29 C.J.S., Elections, § 371 et seq.

21-2-4. Preparation, publicizing, and distributing of summary of constitutional amendments.

(a) The summary of general amendments to the Constitution of Georgia prepared by the Attorney General, the legislative counsel, and the Secretary of State pursuant to Article X, Section I, Paragraph II of the Constitution of Georgia shall be printed by the Secretary of State in sufficient quantities to make available a copy of such summary to any interested citizen requesting a copy. In preparing the summary provided by this provision of the Constitution of Georgia, the Attorney General, the legislative counsel, and the Secretary of State shall provide an explanation of each proposed general amendment to the Constitution of Georgia in language free of legalistic and technical terms, to the end that the summary may be read and understood by the majority of citizens of this state. The Secretary of State shall be authorized to include with such summary, as a part of the same document, a summary or explanation of any state-wide referendum questions to be voted on at the same general election and any other explanatory materials as may be deemed appropriate by the Secretary of State.

(b) The Secretary of State shall cause a supply of the summary to be printed as soon as practicable after the summary has been prepared. The quantity of such supply shall be at the discretion of the Secretary of State. Immediately after receiving a supply of the printed summary, the Secretary of State shall prepare a press release stating that a summary of proposed general amendments to the Constitution of Georgia is available for distribution to interested citizens and advising such citizens of the method or methods by which a copy of such summary may be obtained. The Secretary of State shall distribute this press release to print and broadcast media throughout the state and shall actively seek the cooperation of the media in publicizing the fact that a summary of proposed general amendments to the Constitution of Georgia is available to interested citizens and encouraging citizens to obtain a copy of the summary. The Secretary of State shall reissue, at his discretion, this press release from time to time up to the date of the general election at which the proposed general amendments to the Constitution of Georgia shall be submitted to the electorate for approval or rejection.

(c) The Secretary of State shall send a supply of the printed summary to the superintendent of elections of each county. The press release provided by subsection (b) of this Code section shall state that the summary is available at the office of each election superintendent.

Each election superintendent shall distribute a copy of the summary, as made available by the Secretary of State in his discretion, to any interested citizen on request. The press release shall also state that the summary may be obtained by mail and shall advise citizens how a copy may be so obtained. The Secretary of State shall be authorized to use any additional methods for the distribution of the summary as he may deem necessary to achieve the most effective distribution of the summary to all interested citizens.

(d) The Secretary of State is authorized to provide for the preparation of a supply of audio tapes, compact discs, or other media or an Internet website which shall contain the summary of each proposed general amendment to the Constitution as provided in subsection (a) of this Code section, together with a listing of the candidates for each of the state representatives to the United States Congress and the candidates for every public office elected by the electors of the entire state. A sufficient number of the audio tapes, compact discs, or other media may be prepared as will permit the distribution of at least one tape, disc, or other media form to each of the public libraries within the state for the purpose of providing voting information and assistance to any interested citizen. The Secretary of State may cause a supply of the tapes, discs, or other media to be prepared and distributed as soon as practicable after the summary has been prepared and the names of the candidates for each of the public offices to be included are known to be candidates. If the Secretary of State provides such information through an Internet website, it shall not be necessary to provide such information by audio tape, compact disc, or other media.

History.

Ga. L. 1981, p. 660, § 1; Code 1981, § 21-1-2; Ga. L. 1982, p. 3, § 21; Ga. L. 1983, p. 140, § 2; Ga. L. 1984, p. 1117, § 1; Ga. L. 1989, p. 10, § 1; Ga. L. 1997, p. 400, § 1; Code 1981, § 21-2-4, as redesignated by Ga. L. 2001, Ex. Sess., p. 335, § 4; Ga. L. 2005, p. 253, § 2/HB 244.

Cross references.

Manner of amending Constitution of Georgia, Ga. Const. 1983, Art. X, Sec. I.

Office of Legislative Counsel generally, § 28-4-3.

Duties of Secretary of State with regard to Acts and resolutions of General Assembly, § 45-13-22 et seq.

Powers and duties of Constitutional Amendments Publication Board regarding assignment of numbers to proposed constitutional amendments and proposed new Constitutions, § 50-12-101.

Editor's notes.

The amendment to this Code section by Ga. L. 1988, p. 426, § 2, is not in effect, since it was to become effective only upon ratification of proposed amendments to Ga. Const. 1983, Art. VII, Sec. IV, Para. VII and Art. X, Sec. I, Para. II at the November 1988 general election (see Ga. L. 1988, p. 2116), which proposed constitutional amendments were defeated.

Ga. L. 2001, Ex. Sess., p. 335, § 4, effective October 1, 2001, redesignated former Code Section 21-2-4 as present Code Section 21-1-2 and redesignated former Code Section 21-1-2 as present Code Section 21-2-4.

21-2-4.1. [Repealed] Continuation in office, dismissal, or appointment of members of constitutional or statutory boards or bodies for which membership based on residency within congressional district.

History.
Code 1933, § 34-1803, enacted by Ga. L. 1981, Ex. Sess., p. 131, § 1; Code 1981, § 21-2-4.1, enacted by Ga. L. 1981, Ex. Sess., p. 131, § 2; Ga. L. 1990, p. 1903, § 6; Ga. L. 1996, p. 229, § 1; Ga. L. 1998, p. 295, § 1; repealed by Ga. L. 2011, Ex. Sess., p. 208, § 6/HB 20EX, effective September 6, 2011.

Editor's notes.
Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

21-2-5. Qualifications of candidates for federal and state office; determination of qualifications.

(a) Every candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought.

(b) The Secretary of State upon his or her own motion may challenge the qualifications of any candidate at any time prior to the election of such candidate. Within two weeks after the deadline for qualifying, any elector who is eligible to vote for a candidate may challenge the qualifications of the candidate by filing a written complaint with the Secretary of State giving the reasons why the elector believes the candidate is not qualified to seek and hold the public office for which he or she is offering. Upon his or her own motion or upon a challenge being filed, the Secretary of State shall notify the candidate in writing that his or her qualifications are being challenged and the reasons therefor and shall advise the candidate that he or she is requesting a hearing on the matter before an administrative law judge of the Office of State Administrative Hearings pursuant to Article 2 of Chapter 13 of Title 50 and shall inform the candidate of the date, time, and place of the hearing when such information becomes available. The administrative law judge shall report his or her findings to the Secretary of State.

(c) The Secretary of State shall determine if the candidate is qualified to seek and hold the public office for which such candidate is offering. If the Secretary of State determines that the candidate is not qualified, the Secretary of State shall withhold the name of the candidate from the ballot or strike such candidate's name from the ballot if the ballots have been printed. If there is insufficient time to strike the candidate's name or reprint the ballots, a prominent notice shall be placed at each affected polling place advising voters of the

disqualification of the candidate and all votes cast for such candidate shall be void and shall not be counted.

(d) In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

(e) The elector filing the challenge or the candidate challenged shall have the right to appeal the decision of the Secretary of State by filing a petition in the Superior Court of Fulton County within ten days after the entry of the final decision by the Secretary of State. The filing of the petition shall not itself stay the decision of the Secretary of State; however, the reviewing court may order a stay upon appropriate terms for good cause shown. As soon as possible after service of the petition, the Secretary of State shall transmit the original or a certified copy of the entire record of the proceedings under review to the reviewing court. The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the Secretary of State as to the weight of the evidence on questions of fact. The court may affirm the decision or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the Secretary of State are:

(1) In violation of the Constitution or laws of this state;

(2) In excess of the statutory authority of the Secretary of State;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

An aggrieved party may obtain a review of any final judgment of the superior court by the Court of Appeals or the Supreme Court, as provided by law.

History.

Code 1933, § 34-304, enacted by Ga. L. 1980, p. 312, § 1; Ga. L. 1983, p. 884, § 6-1; Ga. L. 1984, p. 636, § 1; Ga. L. 1985, p. 496, § 1; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 1360, § 1; Ga. L. 1989, p. 900, § 1; Ga. L. 1993, p. 617, § 1; Ga. L. 1997, p. 590, § 2; Ga. L. 1998, p. 145, § 1;

Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 1.

Cross references.

Persons not eligible to hold office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

Restriction on eligibility of commissioner of transportation for state or federal elective office, § 32-2-40.

Eligibility of commissioner of veterans service for state or federal elective office, § 38-4-6.

Eligibility and qualifications of persons for public office generally, T. 45, C. 2.

Administrative rules and regulations.

Qualification of candidates for office; time period during which bank, credit union, or other financial institution may certify error in returning check, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Nomination of Candidates, § 183-1-10-.01.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-3 are included in the annotations for this Code section.

Eligible elector. — One who is not a resident of the city is not an eligible "elector" thereof. Radcliff v. Dingle, 255 Ga. 252, 336 S.E.2d 789, 1985 Ga. LEXIS 967 (1985) (decided under former § 21-3-3).

Candidate improperly deemed ineligible. — In ruling a candidate was not qualified to be elected as a member of the commission from a Georgia Public Service Commission district because the candidate did not meet the residency requirements of O.C.G.A. § 46-2-1(b), the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring the other applicable portions of § 21-2-217(a) to determine the candidate's residency. Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62, 2008 Ga. LEXIS 854 (2008).

Candidate was resident of district. — Although a candidate for membership in the commission from a Georgia Public Service Commission district owned property outside the district on which the candidate held a homestead exemption until a month before the Georgia Secretary of State filed a challenge under O.C.G.A. § 21-2-5, the candidate was a resident of the district for purposes of O.C.G.A. § 46-2-1(b). The candidate spent the most of the candidate's time in the district, was registered to vote there, paid taxes there, and registered automobiles there. Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62, 2008 Ga. LEXIS 854 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-3 are included in the annotations for this Code section.

Registering to vote after qualifying for office. — A candidate who registers to vote only after qualification for office and the closing of the qualification process is not legally qualified to run for office. 1992 Op. Att'y Gen. No. U92-14 (decided under former § 21-3-3).

RESEARCH REFERENCES

ALR.

Constitutionality of candidate participation provisions for primary elections, 121 A.L.R.5th 1.

21-2-6. Qualifications of candidates for county and municipal office; determination of qualifications.

(a) Every candidate for county office who is certified by the county executive committee of a political party or who files a notice of

candidacy, and every candidate for municipal office who is certified by a municipal executive committee of a political party or who files a notice of candidacy, shall meet the constitutional and statutory qualifications for holding the office being sought.

(b) The superintendent upon his or her own motion may challenge the qualifications of any candidate referred to in subsection (a) of this Code section at any time prior to the election of such candidate. Within two weeks after the deadline for qualifying, any elector who is eligible to vote for any such candidate may challenge the qualifications of the candidate by filing a written complaint with the superintendent giving the reasons why the elector believes the candidate is not qualified to seek and hold the public office for which the candidate is offering. Upon his or her own motion or upon a challenge being filed, the superintendent shall notify the candidate in writing that his or her qualifications are being challenged and the reasons therefor and shall advise the candidate that he or she is setting a hearing on the matter and shall inform the candidate of the date, time, and place of the hearing.

(c) The superintendent shall determine if the candidate is qualified to seek and hold the public office for which such candidate is offering. If the superintendent determines that the candidate is not qualified, the superintendent shall withhold the name of the candidate from the ballot or strike such candidate's name from the ballot if the ballots have been printed. If there is insufficient time to strike the candidate's name or reprint the ballots, a prominent notice shall be placed at each affected polling place advising voters of the disqualification of the candidate and all votes cast for such candidate shall be void and shall not be counted.

(d) In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the superintendent shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check.

(e) The elector filing the challenge or the candidate challenged shall have the right to appeal the decision of the superintendent by filing a petition in the superior court of the county in which the candidate resides within ten days after the entry of the final decision by the superintendent. The filing of the petition shall not itself stay the decision of the superintendent; however, the reviewing court may order a stay upon appropriate terms for good cause shown. As soon as possible after service of the petition, the superintendent shall transmit the original or a certified copy of the entire record of the proceedings under review to the reviewing court. The review shall be conducted by the

court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the superintendent as to the weight of the evidence on questions of fact. The court may affirm the decision or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the superintendent are:

(1) In violation of the Constitution or laws of this state;

(2) In excess of the statutory authority of the superintendent;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

An aggrieved party may obtain a review of any final judgment of the superior court by the Court of Appeals or the Supreme Court, as provided by law.

History.

Code 1933, § 34-406, enacted by Ga. L. 1980, p. 312, § 2; Ga. L. 1983, p. 884, § 6-3; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 1360, § 2; Ga. L. 1989, p. 900, § 2; Ga. L. 1993, p. 617, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 1.

Cross references.

Persons not eligible to hold office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

County officers, Ga. Const. 1983, Art. IX, Sec. I, Para. III.

Appointment of school superintendents, § 20-2-101.

Eligibility and qualifications of persons for public office generally, T. 45, C. 2.

Administrative rules and regulations.

Qualification of candidates for office; time period during which bank, credit union, or other financial institution may certify error in returning check, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Nomination of Candidates, § 183-1-10-.01.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Reviewing court to consider factors before superintendent. — Superior court, by relying upon 10 U.S.C. § 973, exceeded its authority as a reviewing court, since that section is not part of the Hatch Act, 5 U.S.C. § 7324 et seq., which was one of the grounds for the complaint, and was not relied upon when the case was before the superintendent of elections. Jolley v. Grantham, 206 Ga. App. 100, 424 S.E.2d 362, 1992 Ga. App. LEXIS 1425 (1992), overruled in part, Hogan v. State, 316 Ga. App. 708, 730 S.E.2d 178, 2012 Ga. App. LEXIS 637 (2012).

County residents' challenge to a school board candidate's residency qualification under O.C.G.A. § 45-2-1(1) and Ga. Const. 1983, Art. VIII, Sec. V, Para. II, was

barred by res judicata because another challenger had raised the same challenge, and the challenge had been resolved against the challenger by the county's board of elections. Lilly v. Heard, 295 Ga. 399, 761 S.E.2d 46, 2014 Ga. LEXIS 536 (2014).

Substitute candidate not qualified to seek office. — In a dispute over who could run for Chief Magistrate Judge of Douglas County in the November 2022 election, the challenge by the incumbent's husband, who was a registered voter eligible to vote in the election, that the substitution of a candidate was improper was allowed because "qualifications," as that statutory term was used, included all of the prerequisites for seeking and holding office, including the procedural requirements to seek office; and, the substitute candidate did not properly qualify to seek office as the original candidate had not secured the nomination. Thus, the Board of Elections and Registration lacked authority to put the substitute candidate on the ballot. Camp v. Williams, 314 Ga. 699, 879 S.E.2d 88, 2022 Ga. LEXIS 258 (2022).

Appeal of election dispute moot. — Where a candidate did not protect the candidate's rights and resolve an election dispute prior to an election and delayed in filing an appeal by an elections superintendent in favor of an incumbent until after the election was over, the candidate's appeal was moot. Jordan v. Cook, 277 Ga. 155, 587 S.E.2d 52, 2003 Ga. LEXIS 835 (2003).

RESEARCH REFERENCES

ALR.

Constitutionality of candidate participation provisions for primary elections, 121 A.L.R.5th 1.

21-2-7. Eligibility of subversive persons for nomination or election to public office.

No person who has been adjudged a "subversive person," as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the "Sedition and Subversive Activities Act of 1953," shall be nominated or elected in accordance with this chapter.

History.

Code 1933, § 34-106, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Cross references.

Persons not eligible to hold office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

Ineligibility of subversive persons to hold office or position in government, § 16-11-12.

Eligibility and qualifications of persons for public office generally, T. 45, C. 2.

Loyalty oath for state officers and employees, § 45-3-11 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 250 et seq. 70 Am. Jur. 2d, Sedition, Subversive Activities, and Treason, § 2 et seq.

C.J.S.

29 C.J.S., Elections, §§ 234, 235.

ALR.

Validity of legislation directed against political, social, or industrial propaganda deemed to be of a dangerous tendency, 73 A.L.R. 1494.

Political principles or affiliations as ground for refusal of government officials to file certificate of nomination or take other steps necessary to representation of party or candidate upon official ticket, 130 A.L.R. 1471.

21-2-8. Eligibility for party nomination, public office, or performance of certain official acts of persons convicted and sentenced for certain crimes; illegally holding any public funds; effect of disqualification of superintendent.

No person shall be eligible for party nomination for or election to public office, nor shall he or she perform any official acts or duties as a superintendent, registrar, deputy registrar, poll officer, or party officer, as set forth in this chapter, in connection with any election or primary held under this chapter, if under the laws of this state, any other state, or the United States he or she has been convicted and sentenced, in any court of competent jurisdiction, for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude. Additionally, the person shall not be holding illegally any public funds. In the event of the disqualification of the superintendent as described in this Code section, the clerk of the superior court shall act in his or her stead. Notwithstanding the above, the governing authority of a municipality shall appoint an individual to serve as superintendent for municipal elections or municipal primaries in the event of the disqualification of the municipal superintendent, unless the municipality has contracted with a county government for the provision of election services, in which event the clerk of the superior court shall act in place of a disqualified superintendent.

History.

Code 1933, § 34-107, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1983, p. 930, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 1; Ga. L. 2005, p. 253, § 3/HB 244.

Cross references.

Persons not eligible to hold office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

Eligibility and qualifications of persons for public office generally, T. 45, C. 2.

Vacating of state office upon conviction of officer for felony, § 45-5-2 and Ga. Const. 1983, Art. II, Sec. III.

Editor's notes.

Ga. L. 1983, p. 930, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article II, Section I, Paragraph III and Article II, Section II, Paragraph III of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Effect of indictment. — Indictment alone would not disqualify person as candidate for public office. 1968 Op. Att'y Gen. No. 68-102.

Privacy Act of 1974 (Pub. L. 93-579) does not alter the powers conferred or obligations imposed by Ga. L. 1964, Ex. Sess., p. 26, § 1 (see now O.C.G.A. § 21-2-8). 1976 Op. Att'y Gen. No. 76-6.

Minimization of privacy invasions. — The command of the Georgia Crime Information Center Act, Ga. L. 1973, p. 1301, to minimize invasions of privacy requires that disseminations of criminal history records to the State Election Board be limited to records of conviction of one of the classes of offenses enumerated in Ga. L. 1964, Ex. Sess., p. 26, § 1 (see

now O.C.G.A. § 21-2-8). 1975 Op. Att'y Gen. No. 75-144.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 250 et seq.
C.J.S.
29 C.J.S., Elections, §§ 234, 235.
ALR.
Violation of liquor law as infamous crime or offense involving moral turpitude, 40 A.L.R. 1048; 71 A.L.R. 217.
Pardon as restoring public office or license or eligibility therefor, 58 A.L.R.3d 1191.

21-2-9. Date of election for offices.

(a) The Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, members of Congress, district attorneys, members of the General Assembly, and county officers not elected pursuant to Code Section 21-2-139 shall be elected in the November election next preceding the expiration of the term of office.

(b) Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, and county judicial officers, offices of local school boards, and nonpartisan offices elected pursuant to Code Section 21-2-139 shall be elected in the nonpartisan general election next preceding the expiration of the term of office.

(c) All general municipal elections to fill municipal offices shall be held on the Tuesday next following the first Monday in November in each odd-numbered year. Public notice of such elections shall be published by the governing authority of the municipality in a newspaper of general circulation in the municipality at least 30 days prior to the elections. In addition, the municipality shall immediately transmit a copy of such notice to the Secretary of State.

(d) Whenever a municipal general primary or election is held in conjunction with the general primary or November general election in even-numbered years, the time specified for the closing of the registration list, the time within which candidates must qualify for the municipal primary or election, and the time specified for the holding of any runoff necessary shall be the same as specified for general elections.

History.
Orig. Code 1863, §§ 1245, 1265, 1266, 1267, 1268, 1270, 1274; Code 1868, §§ 1326, 1346, 1347, 1348, 1349, 1351, 1355; Ga. L. 1869, p. 22, §§ 1, 2; Ga. L. 1872, p. 29, § 2; Ga. L. 1872, p. 80, § 8; Code 1873, §§ 1305, 1319, 1320, 1321, 1323, 1327; Code 1882, §§ 1305, 1319, 1320, 1321, 1323, 1327; Ga. L. 1894, p. 40, § 1; Civil Code 1895, §§ 83, 97, 98, 99, 101, 105; Ga. L. 1898, p. 42, § 1; Ga. L. 1898, p. 43, § 1; Civil Code 1910, §§ 97,

111, 112, 113, 115, 119; Ga. L. 1913, p. 135, § 1; Ga. L. 1914, p. 47, § 1; Code 1933, §§ 34-2302, 34-2401, 34-2602, 34-2603, 34-2701, 34-2705; Ga. L. 1957, p. 102, § 1; Ga. L. 1957, p. 117, § 1; Code 1933, § 34-802, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1978, p. 1004, § 15; Ga. L. 1983, p. 884, § 6-3; Ga. L. 1986, p. 855, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 4/HB 244; Ga. L. 2008, p. 817, § 1/HB 1098; Ga. L. 2012, p. 995, § 1/SB 92.

Law reviews.

For article, "Elections: Elections and Primaries Through the Pandemic," see 37 Ga. St. U.L. Rev. 241 (2020).

For note, "The Case of the Vanishing Supreme Court Contest: *Barrow v. Raffensperger* Eliminates the Power of the People to Elect their Appellate, Superior, and State Court Judges," see 72 Mercer L. Rev. 957 (2021).

JUDICIAL DECISIONS

An election is absolutely void when not held at proper time and place by persons qualified to hold it. Smiley v. Gaskin, 115 Ga. App. 547, 154 S.E.2d 740, 1967 Ga. App. LEXIS 1166 (1967).

Election of justices of the peace (now magistrates) and constables was a general state election. Rose v. State, 107 Ga. 697, 33 S.E. 439, 1899 Ga. LEXIS 126 (1899).

Quo warranto denied challenging appointment of judges. — Trial court's denial of the challenger's petition for a writ of quo warranto was affirmed because the newly created positions on the Georgia Court of Appeals qualified as vacancies under Ga. Const. 1983, Art. VI, Sec. VII, Para. III; thus, the governor had the authority to appoint judges to the vacancies created by amended O.C.G.A. § 15-3-1(a). Clark v. Deal, 298 Ga. 893, 785 S.E.2d 524, 2016 Ga. LEXIS 314 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Reelection of Supreme Court Justice appointed to fill vacancy. — When the Governor appoints to fill a vacancy on the Supreme Court, the appointee must stand for reelection in the nonpartisan judicial primary and also during the next general election in November, which is more than six months after his or her appointment. 1992 Op. Att'y Gen. No. U92-7.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 303.

C.J.S.

29 C.J.S., Elections, § 144 et seq.

21-2-10. Election of presidential electors.

At the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as electors of President and Vice President of the United States and referred to in this chapter as presidential electors, equal in number to the whole number of senators and representatives to which this state may be entitled in the Congress of the United States.

History.

Laws 1824, Cobb's 1851 Digest, p. 235; Code 1863, § 1251; Code 1868, § 1332; Code 1873, § 1311; Code 1882, § 1311; Civil Code 1895, § 89; Civil Code 1910, § 103; Code 1933, § 34-2501; Ga. L. 1958,

p. 208, §§ 1, 3; Code 1933, § 34-1601, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1993, p. 118, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Election of presidential electors is a general election. Moore v. Smith, 140 Ga. 854, 79 S.E. 1116, 1913 Ga. LEXIS 275 (1913).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 6.

ALR.
Presidential and vice-presidential electors, 153 A.L.R. 1066.

21-2-11. Performance of duties by presidential electors.

The presidential electors chosen pursuant to Code Section 21-2-10 shall assemble at the seat of government of this state at 12:00 Noon of the day which is, or may be, directed by the Congress of the United States and shall then and there perform the duties required of them by the Constitution and laws of the United States.

History.
Orig. Code 1863, § 1252; Code 1868, § 1333; Code 1873, § 1312; Ga. L. 1880-81, p. 67, § 1; Code 1882, § 1312; Ga. L. 1888, p. 33, § 1; Civil Code 1895, § 90; Civil Code 1910, § 104; Code 1933, § 34-2502; Code 1933, § 34-1602, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Law reviews.
For survey article on zoning and land use law, see 60 Mercer L. Rev. 457 (2008).

21-2-12. Procedure for filling presidential elector vacancies.

If any such presidential elector shall die, or for any cause fail to attend at the seat of government at the time appointed by law, the presidential electors present shall proceed to choose by voice vote a person of the same political party or body, if any, as such deceased or absent presidential elector, to fill the vacancy occasioned thereby; and immediately after such choice the name of the person so chosen shall be transmitted by the presiding officer of the college to the Governor, who shall immediately cause notice of his or her election in writing to be given to such person. The person so elected, and not the person in whose place he or she shall have been chosen, shall be a presidential elector and shall, with the other presidential electors, perform the duties required of them by the Constitution and laws of the United States.

History.
Laws 1824, Cobb's 1851 Digest, p. 240; Code 1863, § 1253; Code 1868, § 1334; Code 1873, § 1313; Code 1882, § 1313; Civil Code 1895, § 91; Civil Code 1910, § 105; Code 1933, § 34-2503; Code 1933, § 34-1603, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

21-2-13. Compensation of presidential electors; payment of expenses of electoral college.

Each presidential elector shall receive from the state treasury the sum of $50.00 for every day spent in traveling to, remaining at, and returning from the place of meeting and shall be entitled to mileage at the rate of 10¢ per mile to and from his or her home. The reasonable expenses of the electoral college shall likewise be paid by the state treasurer, in both cases upon warrants drawn by the presiding officer of the college.

History.
Orig. Code 1863, § 1257; Code 1868, § 1338; Code 1873, § 1317; Code 1882, § 1317; Ga. L. 1882-83, p. 54, § 1; Civil Code 1895, § 95; Civil Code 1910, § 109; Code 1933, § 34-2507; Code 1933, § 34-1604, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 863, § 3/SB 296.

21-2-14. Computation of time as to exercise of privilege or discharge of duty under chapter.

Unless otherwise stated in a specific Code section of this chapter, time periods under this chapter include Saturdays, Sundays, and legal holidays. When the last day for the exercise of any privilege or the discharge of any duty prescribed or required by this chapter shall fall on a Saturday, Sunday, or legal holiday, the next succeeding business day shall be the last day for the exercise of such privilege or the discharge of such duty.

History.
Code 1933, § 34-105, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 1; Ga. L. 1997, p. 590, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 2.

Cross references.
Computation of time generally, §§ 1-3-1, 9-11-6.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1933, § 34-1011 are included in the annotations for this Code section.

Time extensions in civil actions not incorporated. — The election statute was not intended to incorporate the time extensions permitted under former Code 1933, § 81A-106 (see now O.C.G.A. § 9-11-6). Johnson v. Fortson, 237 Ga. 367, 227 S.E.2d 392, 1976 Ga. LEXIS 1485 (1976) (decided under former Code 1933, § 34-1011).

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Elections held on Saturday. — This section extends the closing date for registration and qualification of candidates until the next succeeding business day if the last day falls on a Saturday, but that section does not affect elections which might be held on Saturday. 1969 Op. Att'y Gen. No. 69-455.

If required by city charter, a municipal election should be held on a legal holiday. 1975 Op. Att'y Gen. No. U75-86.

RESEARCH REFERENCES

ALR.
Validity, construction, and effect of "Sunday Closing" or "Blue" Laws, 10 A.L.R.4th 246.

21-2-15. Applicability of chapter.

This chapter shall apply to any general or special election in this state to fill any federal, state, county, or municipal office, to any general or special primary to nominate candidates for any such office, and to any federal, state, county, or municipal election or primary for any other purpose whatsoever, unless otherwise provided.

History.
Code 1933, § 34-102, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Ground for contest applicable in municipal election. — Although the Georgia Election Code was not applicable by its terms to municipal elections, in the absence of any statutory grounds for contest in the Georgia Municipal Election Code, the ground for contest in former Code 1933, § 34-1703 (see now O.C.G.A. § 21-2-522(c)) was a good ground of contest in a municipal election. Davidson v. Bryan, 242 Ga. 282, 248 S.E.2d 657, 1978 Ga. LEXIS 1171 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Applicability to city elections. — The provisions of the Election Code relating to the "nomination of candidates" shall apply to city elections, except where the provisions of the charter differ from the code. 1967 Op. Att'y Gen. No. 67-239.

Hospital or school bond elections. — Law, which made it a misdemeanor to sell intoxicating beverages on election days, applied to school or hospital bond elections. 1965-66 Op. Att'y Gen. No. 65-17.

Election Code provisions not limited by malt beverage regulations. — Malt beverage regulations may not be modified so as to permit the sale of malt beverages after the hours of the election, or changed to limit the prohibition on election days only with respect to statewide elections, such as a general election or a state-wide primary. 1965-66 Op. Att'y Gen. No. 66-13.

"Election day" construed. — The term "election day", as used in the Constitution, has been construed by the Supreme Court of this state as encompassing a period of time from midnight preceding the opening of the polls until midnight succeeding the closing of the polls. 1965-66 Op. Att'y Gen. No. 66-13.

21-2-16. Construction of chapter.

The provisions of this chapter, so far as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. Unless otherwise provided in this chapter, this chapter shall repeal any conflicting provision or provisions of any municipal act in conflict with this chapter. The repeal by this chapter of any Act of the General Assembly or any municipal corporation, or part thereof, shall not revive any Act, or part thereof, heretofore repealed or

superseded. This chapter shall not affect any act done, liability or penalty incurred, right accrued or vested, or nomination made prior to the taking effect of this chapter; nor shall they affect any action or prosecution then pending or to be instituted, to enforce any right or penalty then accrued or to punish any offense theretofore committed.

History. Code 1933, § 34-104, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

21-2-17. Designation of candidate's chief deputy clerk in elections for clerk of state court of certain counties.

(a) This Code section shall apply only to counties with a population of 425,000 or more according to the United States decennial census of 1990 or any future such census.

(b) When a candidate for election to clerk of the state court of a county is required by law at any time before election to name the person whom such candidate will appoint as chief deputy if elected to office, the ballot for office shall include, below the name of the candidate, the name of each candidate's designated chief deputy, labeled as such.

(c) This Code section shall not be construed to require any action to fill a vacancy in the position of chief deputy of clerk of the state court of a county.

History. Code 1981, § 21-2-17, enacted by Ga. L. 1992, p. 2590, § 1; Ga. L. 1998, p. 295, § 1.

21-2-18. Payment for costs of elections; no solicitation of additional funding.

(a) As used in this Code section, the term:

(1) "Government employee" means any individual, committee, entity, or group acting in concert who are employed by a county or municipal government. Such term shall include, but not be limited to, election superintendents, registrars, poll workers, and the agents and employees thereof.

(2) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, association, committee, corporation, whether operated for profit or not, or any other organization of a group of persons acting in concert, or any other nongovernmental third-party entity.

(b) All costs and expenses related to conducting primaries, elections, runoffs, or other undertakings authorized or required by this chapter shall be paid from lawfully appropriated public funds.

(c) Notwithstanding any other provision of law to the contrary, no county or municipal government, government employee, or election official shall solicit, take, or otherwise accept from any person a contribution, donation, service, or anything else of value for the purpose of conducting primaries or elections or in support of performing his or her duties under this chapter.

(d) This Code section shall not apply to the donation or use of locations for voting purposes, services provided by individuals without remuneration, or goods that have nominal value of less than $500.00.

(e) Violation of this Code section shall constitute a felony, and upon conviction shall be punished by imprisonment for not less than one year and by a fine of not less than $10,000.00.

History.
Code 1981, § 21-2-18, enacted by Ga. L. 2023, p. 563, § 2/SB 222, effective May 3, 2023.

Effective date.
This Code section became effective May 3, 2023.

Editor's notes.
Ga. L. 2023, p. 563, § 1/SB 222, not codified by the General Assembly, provides: "The General Assembly finds that the addition of Code Section 21-2-18 and the revisions to Code Sections 21-2-71 and 21-2-212 in this bill should not be interpreted as an admission by the General Assembly that existing law did not already ban the outside funding of election administration in Georgia. These clarifications and enhancements were deemed necessary because there seemed to be some confusion among certain Georgia counties as to the correct interpretation of existing law."

ARTICLE 2

SUPERVISORY BOARDS AND OFFICERS

RESEARCH REFERENCES

ALR.
Result of election as affected by lack of title or by defective title of election officers, 1 A.L.R. 1535.

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

PART 1

STATE ELECTION BOARD, COUNTY BOARD OF ELECTIONS, AND COUNTY BOARD OF ELECTIONS AND REGISTRATION

Subpart 1

State Election Board

Administrative rules and regulations.
Registration of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, State Election Board, Chapter 183-1-6.

Ballots, Official Compilation of the

Rules and Regulations of the State of Georgia, Georgia Election Code, State Election Board, Subject 183-1-11.

Preparation for and conduct of primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, State Election Board, Subject 183-1-12.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34A-110 and former Code Section 21-3-7 are included in the annotations for Subpart 1.

Duty of board to be knowledgeable. — The decision whether to exercise the right to intervene in municipal election contests requires that the State Election Board be aware of the nature of the proceedings and of problems encountered in elections and election contests in order that it may properly perform its duties. Lyde v. City of Brunswick, 241 Ga. 554, 246 S.E.2d 673, 1978 Ga. LEXIS 1042 (1978) (decided under former Code 1933, § 34A-110).

Petition seeking mandamus requiring officials to administer oath to elected candidates. — A petition seeking mandamus requiring city officials to administer the oath of office to persons who claim to have been elected as write-in candidates in a municipal election requires notice to the State Election Board, and the omission of the required notice constitutes a fatal defect. Lucken v. Falligant, 243 Ga. 816, 256 S.E.2d 788, 1979 Ga. LEXIS 1078 (1979) (decided under former Code 1933, § 34A-110).

RESEARCH REFERENCES

ALR.

Power to enjoin holding of an election, 33 A.L.R. 1376; 70 A.L.R. 733.

Power to enjoin canvassing votes and declaring result of election, 1 A.L.R.2d 588.

21-2-30. Creation; membership; terms of service; vacancies; quorum; bylaws; meetings; executive director.

(a) There is created a state board to be known as the State Election Board, to be composed of a chairperson elected by the General Assembly, an elector to be elected by a majority vote of the Senate of the General Assembly at its regular session held in each odd-numbered year, an elector to be elected by a majority vote of the House of Representatives of the General Assembly at its regular session held in each odd-numbered year, and a member of each political party to be nominated and appointed in the manner provided in this Code section. No person while a member of the General Assembly shall serve as a member of the board.

(a.1)(1) The chairperson shall be elected by the General Assembly in the following manner: A joint resolution which shall fix a definite time for the nomination and election of the chairperson may be introduced in either branch of the General Assembly. Upon passage of the resolution by a majority vote of the membership of the Senate and House of Representatives, it shall be the duty of the Speaker of the House of Representatives to call for the nomination and election of the chairperson at the time specified in the resolution, at which time

the name of the qualified person receiving a majority vote of the membership of the House of Representatives shall be transmitted to the Senate for confirmation. Upon the qualified person's receiving a majority vote of the membership of the Senate, he or she shall be declared the duly elected chairperson; and the Governor shall be notified of his or her election by the Secretary of the Senate. The Governor is directed to administer the oath of office to the chairperson and to furnish the chairperson with a properly executed commission of office certifying his or her election.

(2) The chairperson of the board shall be nonpartisan. At no time during his or her service as chairperson shall the chairperson actively participate in a political party organization or in the campaign of a candidate for public office, nor shall he or she make any campaign contributions to a candidate for public office. Furthermore, to qualify for appointment as chairperson, in the two years immediately preceding his or her appointment, a person shall not have qualified as a partisan candidate for public office, participated in a political party organization or the campaign of a partisan candidate for public office, or made any campaign contributions to a partisan candidate for public office.

(3) The term of office of the chairperson shall continue until a successor is elected as provided in paragraph (1) of this subsection. In the event of a vacancy in the position of chairperson at a time when the General Assembly is not in session, it shall be the duty of the Governor and the Governor is empowered and directed to appoint a chairperson possessing the qualifications as provided in this subsection who shall serve as chairperson until the next regular session of the General Assembly, at which time the nomination and election of a chairperson shall be held by the General Assembly as provided in paragraph (1) of this subsection.

(b) A member elected by a house of the General Assembly shall take office on the day following the adjournment of the regular session in which elected and shall serve for a term of two years and until his or her successor is elected and qualified, unless sooner removed. An elected member of the board may be removed at any time by a majority vote of the house which elected him or her. In the event a vacancy should occur in the office of such a member of the board at a time when the General Assembly is not in session, then the President of the Senate shall thereupon appoint an elector to fill the vacancy if the prior incumbent of such office was elected by the Senate or appointed by the President of the Senate; and the Speaker of the House of Representatives shall thereupon appoint an elector to fill the vacancy if the prior incumbent of such office was elected by the House of Representatives or appointed by the Speaker of the House of Representatives. A member appointed to

fill a vacancy may be removed at any time by a majority vote of the house whose presiding officer appointed him or her.

(c) Within 30 days after April 3, 1968, the state executive committee of each political party shall nominate a member of its party to serve as a member of the State Election Board and, thereupon, the Governor shall appoint such nominee as a member of the board to serve for a term of two years from the date of the appointment and until his or her successor is elected and qualified, unless sooner removed. Thereafter, such state executive committee shall select a nominee for such office on the board within 30 days after a vacancy occurs in such office and shall also select a nominee at least 30 days prior to the expiration of the term of each incumbent nominated by it; and each such nominee shall be immediately appointed by the Governor as a member of the board to serve for the unexpired term in the case of a vacancy, and for a term of two years in the case of an expired term. Each successor, other than one appointed to serve an unexpired term, shall serve for a term of two years; and the terms shall run consecutively from the date of the initial gubernatorial appointment. No person shall be eligible for nomination by such state executive committee unless he or she is an elector and a member in good standing of the political party of the committee. Such a member shall cease to serve on the board and his or her office shall be abolished if and when his or her political organization shall cease to be a "political party" as defined in Code Section 21-2-2.

(d) The Secretary of State shall be an ex officio nonvoting member of the board. Three voting members of the board shall constitute a quorum, and no vacancy on the board shall impair the right of the quorum to exercise all the powers and perform all the duties of the board. The board shall adopt a seal for its use and bylaws for its own government and procedure.

(e) Meetings shall be held whenever necessary for the performance of the duties of the board on call of the chairperson or whenever any two of its members so request. Minutes shall be kept of all meetings of the board and a record kept of the vote of each member on all questions coming before the board. The chairperson shall give to each member of the board prior notice of the time and place of each meeting of the board.

(f) If any member of the board, other than the Secretary of State, shall qualify as a candidate for any public office which is to be voted upon in any primary or election regulated by the board, that member's position on the board shall be immediately vacated and such vacancy shall be filled in the manner provided for filling other vacancies on the board.

(g) On and after July 1, 2023, the board shall be a separate and distinct budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the board shall be

attached for administrative purposes only to the office of the Secretary of State as provided for in Code Section 50-4-3. The board shall neither be under the jurisdiction of the Secretary of State nor shall it be considered a division of the office of the Secretary of State.

(h) The board shall have the power to appoint an executive director who shall be a full-time employee of the board. The executive director shall serve at the pleasure of the board, and the board shall in its discretion appoint and fix the compensation of the executive director. The executive director shall be charged with such duties and powers as provided in this Code section or as delegated by the board. The executive director shall serve as the secretary of the board ex officio but shall not be a voting member of the board or a member for the purposes of constituting a quorum.

(i) The executive director and other employees of the board shall be reimbursed for travel and other expenses incurred in the performance of their duties in the same manner as officers and employees of the office of the Secretary of State.

(j) Venue of any action involving members of the board shall be the county in which is found the primary office of the board. Any notice or legal process necessary to be served upon the board may be served upon the executive director, but the executive director shall not be considered a member of the board in determining the venue of any such action, and no court shall have jurisdiction over any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

(k) The executive director shall:

(1) Keep all records of the board and its proceedings;

(2) With the approval of the board, employ and fix the compensation of personnel as determined necessary to assist the executive director in his or her duties;

(3) With the consent of the board, schedule the time and location of all meetings and hearings, as well as maintain a schedule of all meetings and hearings available for public review;

(4) With the approval of the board, enter into such contracts, leases, agreements, or other transactions with any person or agency as are deemed necessary to carry out the provisions of this chapter or to provide the services required by the board; and

(5) On or before the second Tuesday in January of each year, prepare and deliver a written annual report to the Governor and the chairpersons of the House and Senate Appropriations Committees describing the activities of the board for the previous calendar year.

Such report shall be made available to any member of the General Assembly upon request. The report shall include a summary of all actions taken by the board and a financial report of all income and disbursements and staff personnel. The Governor may request a preliminary financial report for budgetary purposes prior to the executive director delivering the annual report.

History.

Ga. L. 1959, p. 59, § 1; Code 1933, § 34-201, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 862, § 1; Ga. L. 1969, p. 329, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2008, p. 781, § 1/HB 1112; Ga. L. 2021, p. 14, § 5/SB 202; Ga. L. 2023, p. 563, § 3/SB 222, effective May 3, 2023.

The 2021 amendment, effective March 25, 2021, substituted "a chairperson elected by the General Assembly" for "the Secretary of State" in the first sentence of subsection (a); added subsection (a.1); in subsection (d), substituted "an ex officio nonvoting member of the board" for "the chairperson of the board" in the first sentence, and inserted "voting" at the beginning of the second sentence of subsection (d).

The 2023 amendment, effective May 3, 2023, added subsections (g) through (k).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need

accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Standing of Secretary of State to object to request to view election records under Open Records Act. — The Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and 45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469, 2007 Ga. App. LEXIS 1254 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. Mar. 10, 2008).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 83, 87.
C.J.S.
29 C.J.S., Elections, § 108 et seq.
ALR.
Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471; 170 A.L.R. 198.

21-2-31. Duties.

It shall be the duty of the State Election Board:

(1) To promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections;

(2) To formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections; and, upon the adoption of each rule and regulation, the board shall promptly file certified copies thereof with the Secretary of State and each superintendent;

(3) To publish in print or electronically and furnish to primary and election officials, from time to time, a sufficient number of indexed copies of all primary and election laws and pertinent rules and regulations then in force;

(4) To publish in print or electronically and distribute such explanatory pamphlets regarding the interpretation and application of primary and election laws as in the opinion of the board should be distributed to the electorate;

(5) To investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution. Nothing in this paragraph shall be so construed as to require any complaining party

to request an investigation by the board before such party might proceed to seek any other remedy available to that party under this chapter or any other provision of law;

(6) To make such recommendations to the General Assembly as it may deem advisable relative to the conduct and administration of primaries and elections;

(7) To promulgate rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system used in this state;

(8) To employ such assistants as may be necessary;

(9) Subject to funds being specifically appropriated by the General Assembly, to formulate and conduct a voter education program concerning voting procedures for voting by absentee ballot and at the polls with particular emphasis on the proper types of identification required for voting; and

(10) To take such other action, consistent with law, as the board may determine to be conducive to the fair, legal, and orderly conduct of primaries and elections.

History.

Ga. L. 1958, p. 269, § 45; Ga. L. 1959, p. 57, § 1; Code 1933, § 34-202, enacted by Ga. L. 1968, p. 862, § 2; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 1670, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 2; Ga. L. 2003, p. 517, § 2; Ga. L. 2006, p. 3, § 1/SB 84; Ga. L. 2008, p. 781, § 2/HB 1112; Ga. L. 2010, p. 838, § 10/SB 388.

Administrative rules and regulations.

Registration of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, State Election Board, Subject 183-1-6.

Returns of primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, State Election Board, Subject 183-1-15.

Rules of the State Election Board, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Chapter 183-1 et seq.

Rules for voter registration by private entities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.02.

Preparation for and conduct of primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Subject 183-1-12-.03.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 145 (2006).

JUDICIAL DECISIONS

Board required to be aware of contest proceedings. — The decision whether to intervene in election contest requires that the State Election Board be aware of the nature of the election contest proceedings, and of problems encountered in elections and election contests, in order that it may properly perform its duties

under O.C.G.A. § 21-2-31. Lyde v. City of Brunswick, 241 Ga. 554, 246 S.E.2d 673, 1978 Ga. LEXIS 1042 (1978).

Standing of Secretary of State to object to request to view election records under Open Records Act. — The Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and 45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469, 2007 Ga. App. LEXIS 1254 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. Mar. 10, 2008).

Signature verification process. — When plaintiff campaigns filed a complaint regarding Georgia's processing of absentee ballots for U.S. Senate runoff elections, the federal circuit court concluded that the campaigns failed to make a strong showing that the campaigns had standing to bring their constitutional claims because the campaigns failed to demonstrate that any alleged injury was traceable to, and redressable by, the state; other than being the chief election officer responsible for election laws, there was no allegation that the Georgia Secretary of State controlled the local supervisors or had control over the signature verification process. Ga. Republican Party, Inc. v. Sec'y of State for the Ga., No. 20-14741-RR, 2020 U.S. App. LEXIS 39969 (11th Cir. Dec. 20, 2020).

OPINIONS OF THE ATTORNEY GENERAL

No authority to remove names from primary ballots. — Neither the State Election Board nor the Secretary of State has the authority to order candidates' names removed from primary ballots. 1974 Op. Att'y Gen. No. 74-96.

Board may receive criminal record information. — Since the State Election Board is empowered to investigate and enforce by civil actions, it would be entitled to receive criminal history record information in connection with any such investigation or litigation. 1975 Op. Att'y Gen. No. 75-144.

Board's powers include powers of judge of probate court. — Amendments to the Georgia Election Code after 1967 which confer additional responsibilities on the judge of probate court would confer those powers on the Board of Elections, absent a concurrent, contrary mandate by the General Assembly. 1975 Op. Att'y Gen. No. U75-88.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 7, 36, 93 et seq.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

21-2-32. Institution of and intervention in court actions; procedures; appellate review.

(a) The State Election Board shall have the right to institute or to intervene as a party in any action in any court of this state or of the United States, seeking mandamus, injunction, or other relief, to compel compliance with any election or primary law of the state or with any valid rule or regulation of the board, or to restrain or otherwise prevent or prohibit any fraudulent or other illegal conduct in connection

therewith, including the right to seek such relief for any anticipatory breach.

(b) Any petition seeking any of the relief authorized in subsection (a) of this Code section shall be filed in the superior court of the county of residence of the superintendent charged with the conduct of the election or primary in which it is alleged that there was or will be fraud or other illegal conduct or, in the case of municipal primaries and elections, in the county in which the city hall is located.

(c) Upon the filing of such petition, the clerk of superior court having jurisdiction shall immediately notify the administrative judge for the judicial administrative district in which the county lies, or the district court administrator, who shall immediately notify the administrative judge, of the institution of proceedings under this article. If the county in which the proceedings were instituted is not in the circuit of the administrative judge, the administrative judge shall select a superior court judge from within the district, but not from the circuit in which the proceeding was instituted, or a senior judge who is not a resident of the circuit in which the proceeding was instituted, to preside over the proceeding.

(d) If the administrative judge is a member of the circuit in which the proceeding was filed, or if the other judges of the district are unable or are unwilling to preside over the proceeding, or if the other judges of the district are judges of the circuit in which the proceeding was filed, then the administrative judge shall select an administrative judge of an adjoining district to select a superior court judge from that district, or a superior court judge from the district in which the proceeding was filed, but not the circuit in which the proceeding was filed, or a senior judge who is not a resident of the circuit wherein the proceeding was filed. In the event any temporary order is sought, the petition may be presented to the administrative judge prior to its filing for consideration of the application for such order. If the petition upon which temporary relief is sought prior to the filing will be filed in any county of the circuit of the administrative judge, then the petition may be presented to the administrative judge of an adjoining district prior to its filing for consideration of the application for such order.

(e) After a judge has agreed to preside over the case, the administrative judge who selected the judge to hear the matter shall enter an order in the superior court of the county where the proceeding was filed appointing such judge, and such judge shall promptly begin presiding over such proceedings in such court and shall determine same as soon as practicable. Such judge shall be reimbursed for his or her actual expenses for food and lodging and shall receive the same mileage as any other state officials and employees. Senior judges shall be entitled to compensation and reimbursement as the law provides for senior judge service.

(f) If, in the opinion of the judge presiding over such cause, adequate relief cannot otherwise be granted to assure compliance with said laws, rules, and regulations, the judge may enter such order concerning the conduct of such election or primary which he or she shall deem necessary to assure compliance, including the right to require such election or primary to be held under the supervision of the State Election Board.

(g) Upon any action being filed in any court of this state seeking relief affecting the calling, holding, conduct, determination, result, tabulation, or certification of any election or primary, except those instituted by the State Election Board, a copy of the proceeding shall be served upon such board by mailing a copy of same to the chairperson by certified or registered mail or statutory overnight delivery; and a certificate that such service has been made shall be filed by the plaintiff or the plaintiff's attorney.

(h) Any verdict, judgment, decree, order, ruling, or other judicial action in such cases shall be subject to review by the appellate court having jurisdiction thereof. It shall be the duty of the proper appellate court to consider application for stays or supersedeas in such cases without regard to whether any appeal has been filed or the record docketed in such cases.

History.

Code 1933, § 34-203, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1991, p. 608, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2000, p. 1589, § 4.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, made this Act applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Purpose for which notice is given to the State Election Board is to give the board an opportunity to intervene in an action brought under this section. Hill v. Bargeron, 240 Ga. 490, 241 S.E.2d 251, 1978 Ga. LEXIS 776 (1978).

The decision whether to intervene in municipal election contests requires that the State Election Board be aware of the nature of the proceedings, and for problems encountered in elections and election contests, in order that it may properly perform its duties under this section. Copies of the proceedings are also necessary to assist the board in promulgating rules and regulations, in publishing and distributing explanatory pamphlets interpreting the election laws, in conducting investigations where necessary, and in making recommendations to the General Assembly. Lyde v. City of Brunswick, 241 Ga. 554, 246 S.E.2d 673, 1978 Ga. LEXIS 1042 (1978).

"Seeking relief affecting the calling, holding, conduct" not to be strictly construed. — To accomplish the intended purposes of O.C.G.A. § 21-2-32, the words "seeking relief affecting the calling, holding, conduct," are not to be given a strict interpretation. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981).

"Action seeking relief" construed. — An action seeking to enjoin the placing of a candidate's name upon the ballot is an action seeking relief affecting the conduct, determination, result, etc., of a primary or election. O'Keefe v. Braddock, 237 Ga. 838, 229 S.E.2d 758, 1976 Ga. LEXIS 1415 (1976).

A petition seeking mandamus requiring city officials to administer the oath of office to persons who claim to have been elected as write-in candidates in a municipal election is such a proceeding that requires notice to the State Election Board. Lucken v. Falligant, 243 Ga. 816, 256 S.E.2d 788, 1979 Ga. LEXIS 1078 (1979).

Standing of Secretary of State to object to request to view election records under Open Records Act. — The Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and 45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469, 2007 Ga. App. LEXIS 1254 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. Mar. 10, 2008).

Omission of required notice under subsection (d) (now subsection (g)) of this section constitutes a fatal defect. O'Keefe v. Braddock, 237 Ga. 838, 229 S.E.2d 758, 1976 Ga. LEXIS 1415 (1976); Lucken v. Falligant, 243 Ga. 816, 256 S.E.2d 788, 1979 Ga. LEXIS 1078 (1979).

Failure to file certificate of perfected service constitutes a fatal defect. — If no certificate that service had been perfected upon the State Election Board was filed as required by subsection (d) (now subsection (g)) of this section, it is not error for the court to dismiss a petition in an election contest. Moody v. Carter, 128 Ga. App. 27, 195 S.E.2d 204, 1973 Ga. App. LEXIS 1370 (1973).

Notice to be given immediately following filing of action. — The word "upon" in subsection (d) (now subsection (g)) of this section means "immediately following on" or "very soon after." Late or eleventh-hours service is not in conformity with the express statutory language. Hill v. Bargeron, 240 Ga. 490, 241 S.E.2d 251, 1978 Ga. LEXIS 776 (1978).

Failure to mail notice or file certificate of service. — Where the record reflected service on the Secretary of State by the sheriff, the absence of the formalities required under O.C.G.A. § 21-2-32(d) (now subsection (g)) was not fatal. Hanson v. Wilson, 257 Ga. 5, 354 S.E.2d 126, 1987 Ga. LEXIS 699 (1987).

"Court" does not include city council. — Subsection (d) (now subsection (g)) of this section will not be expanded so as to include a city council within the definition of "court". Collins v. Williams, 237 Ga. 576, 229 S.E.2d 388, 1976 Ga. LEXIS 1307 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Board may receive criminal record information. — Since the State Election Board is empowered to investigate and enforce by civil actions, it would be entitled to receive criminal history record information in connection with any such investigation or litigation. 1975 Op. Att'y Gen. No. 75-144.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 8, 37, 90 et seq.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

ALR.
Power to enjoin holding of an election, 33 A.L.R. 1376; 70 A.L.R. 733.

21-2-33. Hearings before board.

The State Election Board may examine under oath any person concerning any matter connected with or bearing on the proper dis-

charge of its duties; and any member of the board may administer such oath. The board shall have full power to subpoena persons and papers and to compel the witnesses to answer under oath touching any questions which may properly come before the board and to take, through its agent, the depositions of witnesses. The board, in investigating the administration of primary and election laws within a county or any frauds or irregularities in primaries and elections held therein, shall conduct each hearing concerning same at a place within such county. No witness shall be compelled to attend if he or she should reside more than 100 miles from the place of hearing by the nearest practical route; provided, however, that the board may compel the taking of his or her testimony by deposition in the county of the residence of the witness. The sheriff of any county, or his or her deputy, or agent of the board shall serve all processes issued by the board; or the same may be served by registered or certified mail or statutory overnight delivery; and the production of an appropriate return receipt issued by the post office or commercial delivery firm shall constitute prima-facie evidence of such service. In case of the refusal of any person subpoenaed to attend or testify, such facts shall be reported forthwith by the board to the appropriate superior court, or to a judge thereof, and such court or judge shall order such witness to attend and testify. On failure or refusal to obey such order, such witness shall be dealt with as for contempt. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as now allowed and paid witnesses in civil actions in the superior court.

History.
Code 1933, § 34-204, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 20, § 1.

Cross references.
Witness fees and mileage, § 24-13-25.

Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, made this Act applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 8, 37, 90 et seq.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

21-2-33.1. Enforcement of chapter; suspension of election superintendents; support and assistance from the Secretary of State.

(a) The State Election Board is vested with the power to issue orders, after the completion of appropriate proceedings, directing compliance with this chapter or prohibiting the actual or threatened commission of

any conduct constituting a violation, which order may include a provision requiring the violator:

(1) To cease and desist from committing further violations;

(2) To pay a civil penalty not to exceed $5,000.00 for each violation of this chapter or for each failure to comply with any provision of this chapter or of any rule or regulation promulgated under this chapter. Such penalty may be assessed against any violator as the State Election Board deems appropriate;

(3) To publicly reprimand any violator found to have committed a violation;

(4) To require that restitution be paid by any violator to a state, county, or city governing authority when it has suffered a monetary loss or damage as the result of a violation;

(5) To require violators to attend training as specified by the board; and

(6) To assess investigative costs incurred by the board against any violator found to have committed a violation.

(b) A civil penalty shall not be assessed against any violator except after notice and hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In addition to the State Election Board, any contested case may be held before any representative of such board who has been selected and appointed by such board for such purpose. The amount of any civil penalty finally assessed shall be recoverable by a civil action brought in the name of the State Election Board. All moneys recovered pursuant to this Code section shall be deposited in the state treasury.

(c) The Attorney General of this state shall, upon complaint by the State Election Board, bring an action in the superior court in the name of the State Election Board for a temporary restraining order or other injunctive relief or for civil penalties assessed against any violator of any provision of this chapter or any rule or regulation duly issued by the State Election Board.

(d) Any action brought by the Attorney General to enforce civil penalties assessed against any violator of this chapter or any rule or regulation duly issued by the State Election Board or any order issued by the State Election Board ordering compliance or to cease and desist from further violations shall be brought in the superior court of the county of the residence of the party against whom relief is sought. Service of process shall lie in any jurisdiction within the state. In such actions, the superior court inquiry will be limited to whether notice was given by the State Election Board to the violator in compliance with the

Constitution and the rules of procedure of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Upon satisfaction that notice was given and a hearing was held pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the superior court shall enforce the orders of the State Election Board and the civil penalties assessed under this chapter and the superior court shall not make independent inquiry as to whether the violations have occurred.

(e) In any action brought by the Attorney General to enforce any of the provisions of this chapter or of any rule or regulation issued by the State Election Board, the judgment, if in favor of the State Election Board, shall provide that the defendant pay to the State Election Board the costs, including reasonable attorneys' fees, incurred by the State Election Board in the prosecution of such action.

(f) After following the procedures set forth in Code Section 21-2-33.2, the State Election Board may suspend county or municipal superintendents and appoint an individual to serve as the temporary superintendent in a jurisdiction. Such individual shall exercise all the powers and duties of a superintendent as provided by law, including the authority to make all personnel decisions related to any employees of the jurisdiction who assist with carrying out the duties of the superintendent, including, but not limited to, the director of elections, the election supervisor, and all poll officers.

(g) At no time shall the State Election Board suspend more than four county or municipal superintendents pursuant to subsection (f) of this Code section.

(h) The Secretary of State shall, upon the request of the State Election Board, provide any and all necessary support and assistance that the State Election Board, in its sole discretion, determines is necessary to enforce this chapter or to carry out or conduct any of its duties.

History.

Code 1981, § 21-2-33.1, enacted by Ga. L. 1993, p. 1670, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 3, 27; Ga. L. 2005, p. 253, § 5/HB 244; Ga. L. 2021, p. 14, § 6/SB 202.

The 2021 amendment, effective March 25, 2021, added subsections (f) through (h).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

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"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in

line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-33.2. Extraordinary relief; hearings; suspension and reinstatement of superintendents; litigation expenses.

(a) The governing authority of a county or municipality, as applicable, following a recommendation based on an investigation by a performance review board pursuant to Code Section 21-2-106 may petition the State Election Board, through the Secretary of State, for extraordinary relief pursuant to this Code section. In addition, the State Election Board, on its own motion or following a recommendation based on an investigation by a performance review board pursuant to Part 5 of this article, may pursue the extraordinary relief provided in this Code section.

(b) Upon receiving a petition or taking appropriate action pursuant to subsection (a) of this Code section, the State Election Board shall conduct a preliminary investigation to determine if sufficient cause exists to proceed to a full hearing on the petition. Such preliminary investigation shall be followed by a preliminary hearing which shall take place not less than 30 days nor more than 90 days after the Secretary of State receives the petition. Service of the petition shall be made by hand delivery or by statutory overnight delivery to the Secretary of State's office. At such preliminary hearing, the State Election Board shall determine if sufficient cause exists to proceed to a full hearing on the petition or if the petition should be dismissed. The State Election Board shall promulgate rules and regulations for conducting such preliminary investigation and preliminary hearing.

(c) Following the preliminary hearing described in subsection (b) of this Code section, the State Election Board may suspend a county or municipal superintendent pursuant to this Code section if at least three members of the board find, after notice and hearing, that:

(1) By a preponderance of the evidence, a county or municipal superintendent has committed at least three violations of this title or of State Election Board rules and regulations, in the last two general election cycles; and the county or municipal superintendent has not sufficiently remedied the violations; or

(2) By clear and convincing evidence, the county or municipal superintendent has, for at least two elections within a two-year period, demonstrated nonfeasance, malfeasance, or gross negligence in the administration of the elections.

(d) A majority of the members of a board of elections, board of elections and registration, or county commission; a probate judge who serves as election superintendent, or, for a sole commissioner form of government, a sole commissioner may petition the Secretary of State to continue any hearing scheduled pursuant to this Code section. Upon a showing of good cause, the State Election Board may in its sound discretion continue any such hearing. Notwithstanding any other provision of law, deliberations held on such petition by the State Election Board shall not be open to the public; provided, however, that testimony shall be taken in an open meeting and a vote on the recommendation shall be taken in an open meeting following the hearing or at the next regularly scheduled meeting.

(e)(1) If the State Election Board makes a finding in accordance with subsection (c) of this Code section, it may suspend the superintendent or board of registrars with pay and appoint an individual to serve as the temporary superintendent. The temporary superintendent who is appointed shall be otherwise qualified to serve or meet the necessary qualifications within three months of appointment.

(2) Any superintendent suspended under this Code section may petition the State Election Board for reinstatement no earlier than 30 days following suspension and no later than 60 days following suspension. In the event that a suspended superintendent or registrar does not petition for reinstatement within the allotted time period, his or her suspension shall be converted into permanent removal, and the temporary superintendent shall become a permanent superintendent subject to removal by the jurisdiction not less than nine months after his or her appointment.

(3) If, after the expiration of the nine-month period following the appointment, the jurisdiction removes the permanent superintendent, any provisions of local or general law governing appointment of

the superintendent shall govern the appointment of the superintendent.

(4) If, at any time after the expiration of the nine-month period following the appointment, at least three members of the State Election Board find, after notice and hearing, that the jurisdiction no longer requires a superintendent appointed under this Code section, any provisions of local or general law governing appointment of the superintendent shall govern the appointment of the superintendent.

(f) Upon petition for reinstatement by a superintendent suspended pursuant to a finding under paragraph (1) of subsection (c) of this Code section, the State Election Board shall conduct a hearing for the purpose of receiving evidence relative to whether the superintendent's continued service as superintendent is more likely than not to improve the ability of the jurisdiction to conduct elections in a manner that complies with this chapter. The suspended superintendent shall be given at least 30 days' notice prior to such hearing and such hearing shall be held no later than 90 days after the petition is filed in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that the State Election Board shall have the power to call witnesses and request documents on its own initiative. If the State Election Board denies the petition, it shall be deemed a final agency decision under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and it may be appealed in a manner consistent with Code Section 50-13-19. The Attorney General or his or her designee shall represent the interests of the State Election Board in any such judicial review.

(g) A local government shall not expend any public funds for attorneys' fees or expenses of litigation relating to the proceedings initiated pursuant to this Code section except to the extent such fees and expenses are incurred prior to and through the recommendation of the State Election Board as provided in subsection (c) of this Code section; provided, however, that nothing in this subsection shall be construed to prohibit an insurance provider from covering attorneys' fees or expenses of litigation under an insurance policy. Any suspended superintendent who is reinstated by the State Election Board pursuant to this Code section may be reimbursed by the local government for his or her reasonable attorneys' fees and related expenses incurred in pursuing such reinstatement.

(h) For purposes of this Code section, where a judge of probate court serves as the superintendent, the suspension authorized by this Code section shall apply only to the judge of probate court's duties as a superintendent and not as a judge of probate court.

(i) When the State Election Board exercises its authority under subsection (f) of Code Section 21-2-33.1, the jurisdiction involved shall

not diminish or reduce the funds already budgeted or appropriated by the jurisdiction pursuant to Code Section 21-2-71 and shall pay any necessary and reasonable funds over that amount, as determined by the temporary superintendent, to faithfully carry out their obligations under Code Section 21-2-70.

History.

Code 1981, § 21-2-33.2, enacted by Ga. L. 2021, p. 14, § 7/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

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Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-34. Compensation and expenses of members.

Each member of the State Election Board shall receive a per diem in an amount equal to the per diem received by members of the General Assembly for each day or portion thereof spent in serving as members of the State Election Board. Each member of the State Election Board shall be paid his or her necessary traveling expenses while engaged in the business of the State Election Board.

History.
Ga. L. 1958, p. 269, § 45; Code 1933, § 34-205, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1985, p. 496, § 2; Ga. L. 1998, p. 295, § 1.

Cross references.
Per diem for members of General Assembly, § 45-7-4.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 112, 121.

21-2-35. Emergency rules and regulations; imminent peril requirement; procedures.

(a) Notwithstanding any other provision of this chapter, Chapter 3 of Title 38, relating to emergency management, or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the contrary, the State Election Board may only adopt emergency rules or regulations in circumstances of imminent peril to public health, safety, or welfare. To adopt any such emergency rule or regulation, in addition to any other rule-making requirement of this chapter or Chapter 13 of Title 50, the State Election Board shall:

(1) Give notice to the public of its intended action;

(2) Immediately upon the setting of the date and time of the meeting at which such emergency rule or regulation is to be considered give notice by email of its intended action to:

(A) The Governor;

(B) The Lieutenant Governor;

(C) The Speaker of the House of Representatives;

(D) The chairpersons of the standing committees of each house of the General Assembly tasked with election matters;

(E) Legislative counsel; and

(F) The chief executive officer of each political party registered pursuant to subsection (a) of Code Section 21-2-110; and

(3) State in the notices required by paragraphs (1) and (2) of this subsection the nature of the emergency and the manner in which such emergency represents an imminent peril to public health, safety, or welfare.

(b) Upon adoption or promulgation of any emergency rule or regulation pursuant to this Code section, a majority of the State Election Board shall certify in writing that such emergency rule or regulation was made in strict and exact compliance with the provisions of this chapter and subsection (e) of Code Section 50-13-4.

(c) In the event of any conflict between this Code section and any provision of Chapter 13 of Title 50, this Code section shall govern and supersede any such conflicting provision.

History.

Code 1981, § 21-2-35, enacted by Ga. L. 2021, p. 14, § 8/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

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Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-36. Notification of proposed consent agreement, settlement, or consent order.

The State Election Board, the members thereof, the Secretary of State, and any of their attorneys or staff, at least five business days prior to entering into any consent agreement, settlement, or consent order that limits, alters, or interprets any provision of this chapter, shall notify the House of Representatives and Senate Committees on the Judiciary of such proposed consent agreement, settlement, or consent order.

History.

Code 1981, § 21-2-36, enacted by Ga. L. 2021, p. 14, § 8/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

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Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

Subpart 2

County Board of Elections and County Board of Elections and Registration

21-2-40. Creation of county board of elections and county board of elections and registration.

(a) The General Assembly may by local Act create a board of elections in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections. Such board shall consist of not fewer than three members.

(b) The General Assembly may by local Act create a board of elections

and registration in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections and with the powers and duties of the board of registrars relating to the registration of voters and absentee-balloting procedures. Such board shall consist of not fewer than three members.

History.
Code 1981, § 21-2-40, enacted by Ga. L. 1982, p. 1292, § 2; Ga. L. 1983, p. 140, § 1; Ga. L. 1990, p. 243, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2012, p. 995, § 2/SB 92.

Law reviews.
For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

JUDICIAL DECISIONS

County residents' challenge to a school board candidate's residency qualification under O.C.G.A. § 45-2-1(1) and Ga. Const. 1983, Art. VIII, Sec. V, Para. II, was barred by res judicata because another challenger had raised the same challenge, and the challenge had been resolved against the challenger by the county's board of elections. Lilly v. Heard, 295 Ga. 399, 761 S.E.2d 46, 2014 Ga. LEXIS 536 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Precedence of local law in selection of board members. — Local act creating a county board of elections and registration does not conflict with O.C.G.A. § 21-2-211 and it is appropriate to determine by local act the method of selecting the members of the board of elections and registration. 1986 Op. Att'y Gen. No. U86-38.

Nonpartisanship not required. — No federal law or regulation requires a board of elections or board of registrars to be nonpartisan or to provide for equal representation of political parties. 1986 Op. Att'y Gen. No. U86-38.

Membership of political party officers. — O.C.G.A. § 21-2-76 does not prohibit persons who hold office in political parties from serving as members of county boards of elections or boards of elections and registration. 1996 Op. Att'y Gen. No. 96-18.

Petitions in Murray County under the home rule provisions of the constitution should be filed with the judge of the probate court, rather than with the board of elections. 1988 Op. Att'y Gen. No. U88-15.

Subpart 3

Municipal Elections Conducted by Counties

21-2-45. Creation of joint county-municipal board of elections and board of elections and registration.

(a) The General Assembly may by local Act create a joint county-municipal board of elections in any county of this state for that county and any municipality located wholly or partially within that county and empower the board with the powers and duties of the election superin-

tendent of that county and municipality with regard to the conduct of primaries and elections. Such board shall consist of not fewer than three members.

(b) The General Assembly may by local Act create a joint county-municipal board of elections and registration in any county of this state for that county and any municipality located wholly or partially within that county and empower the board with the powers and duties of the election superintendent of that county and municipality with regard to the conduct of primaries and elections and empower the board with the powers and duties of the registrars and board of registrars of that municipality and county with regard to the registration of voters and absentee-balloting procedures. Such board shall consist of not fewer than three members.

(c) The governing authority of any municipality may authorize any county within which that municipality wholly or partially lies to conduct any or all elections held pursuant to this chapter. In the event a municipality shall by ordinance authorize such county to conduct elections, such municipality may request such county to perform any or all of the functions:

(1) That the county shall perform all duties as superintendent of elections as specified under this chapter;

(2) That the county shall perform all duties as superintendent of elections as specified under this chapter, with the exception of the qualification of candidates; or

(3) That the county shall lease or loan any or all of its election equipment to the municipality for the purpose of conducting municipal elections without any responsibility on the part of the county for the actual conduct of the municipal election.

With reference to any election, such municipality shall pay such county all costs incurred in performing those functions which the municipality has requested the county to perform; and, unless otherwise authorized, such county shall only perform those functions specifically enumerated in the contract. Such county shall have authority to conduct elections in any and all counties in which any part of such municipality may lie.

History.
Code 1981, § 21-2-45, enacted by Ga. L. 1984, p. 680, § 1; Ga. L. 1986, p. 772, § 1; Ga. L. 1987, p. 1360, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 3/SB 92.

21-2-45.1. Special elections on bonded debt; publication; date; discount.

(a) The governing authority of a county, municipality, or political

subdivision desiring to incur bonded debt in accordance with the provisions of the Constitution of Georgia shall call a special election to be held on a certain day for the purpose of submitting to the electorate the question of whether such bonded debt shall be incurred. The governing authority shall publish notice of such election once a week for a period of four weeks immediately preceding the day of the election in a newspaper which publishes the sheriff's advertisements for the county containing all or the largest part of the area of the county, municipality, or political subdivision involved. Such notice shall specify (1) the date of the election and the question to be submitted to the electorate, and (2) the principal amount of bonds to be issued, the purpose for which such bonds are to be issued, the interest rate or rates such bonds are to bear, and the amount of principal to be paid in each year during the life of such bonds; provided, however, that the governing authority, in lieu of specifying the rate or rates of interest which such bonds are to bear, may specify in the notice that such bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest as stated in the notice or that, in the event such bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rates stated in the notice.

(b) The date of a municipal bond election shall be specified by the governing authority of the municipality. Such date shall not be less than 30 days after call of such bond election. The municipality shall immediately transmit a copy of such notice to the Secretary of State.

(c) Nothing contained in this Code section shall prohibit the issuer from selling such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in the notice of the election.

History.

Code 1981, § 21-2-45.1, enacted by Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2008, p. 817, § 2/HB 1098.

Cross references.

Additional provisions regarding bonded debt, § 36-82-1.

Law reviews.

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Sufficient notice. — Election notice was sufficient under O.C.G.A. §§ 21-2-45.1(a) and 36-82-1(b) because even if the clerical error could have been considered an "irregularity" in the election process, it would not, as a matter of law, have warranted setting aside the election pursuant to O.C.G.A. § 21-2-522. DeLeGal v. Burch, 273 Ga. App. 825, 616 S.E.2d 485, 2005 Ga. App. LEXIS 622 (2005).

RESEARCH REFERENCES

C.J.S.

29 C.J.S., Elections, §§ 135, 139, 143. 64A C.J.S., Municipal Corporations, § 2065.

ALR.

Statement regarding cost of proposed public improvement in ballot for special election in that regard, 117 A.L.R. 892.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

Validity of submission of proposition to voters at bond election as effected by inclusion of several structures or units, 4 A.L.R.2d 617.

Part 2

Secretary of State

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

21-2-50. Powers and duties; prohibition against serving in fiduciary capacity.

(a) The Secretary of State shall exercise all the powers granted to the Secretary of State by this chapter and shall perform all the duties imposed by this chapter, which shall include the following:

(1) To determine the forms of nomination petitions, ballots, and other forms the Secretary of State is required to determine under this chapter;

(2) To receive registration statements from political parties and bodies and to determine their sufficiency prior to filing, in accordance with this chapter, and to settle any disputes concerning such statements;

(3) To receive and determine the sufficiency of nomination petitions of candidates filing notice of their candidacy with the Secretary of State in accordance with this chapter;

(4) To certify to the proper superintendent official lists of all the political party candidates who have been certified to the Secretary of State as qualified candidates for the succeeding primary and to certify to the proper superintendent official lists of all the candidates who have filed their notices of candidacy with the Secretary of State, both such certifications to be in substantially the form of the ballots to be used in the primary or election. The Secretary of State shall add to such form the language to be used in submitting any proposed constitutional amendment or other question to be voted upon at such election;

(5) To furnish to the proper superintendent all blank forms, including tally and return sheets, numbered lists of voters, cards of

instructions, notices of penalties, instructions for marking ballots, tally sheets, precinct returns, recap sheets, consolidated returns, oaths of managers and clerks, oaths of assisted electors, voters certificates and binders, applications for absentee ballots, envelopes and instruction sheets for absentee ballots, and such other supplies as the Secretary of State shall deem necessary and advisable from time to time, for use in all elections and primaries. Such forms shall have printed thereon appropriate instructions for their use;

(6) To receive from the superintendent the returns of primaries and elections and to canvass and compute the votes cast for candidates and upon questions, as required by this chapter;

(7) To furnish upon request a certified copy of any document in the Secretary of State's custody by virtue of this chapter and to fix and charge a fee to cover the cost of furnishing same;

(8) To perform such other duties as may be prescribed by law;

(9) To determine and approve the form of ballots for use in special elections;

(10) To prepare and provide a notice to all candidates for federal or state office advising such candidates of such information, to include requirements of this chapter, as may, in the discretion of the Secretary of State, be conducive to the fair, legal, and orderly conduct of primaries and elections. A copy of such notice shall be provided to each superintendent for further distribution to candidates for county and militia district offices;

(11) To conduct training sessions at such places as the Secretary of State deems appropriate in each year for the training of registrars and superintendents of elections;

(12) To prepare and publish, in the manner provided in this chapter, all notices and advertisements in connection with the conduct of elections which may be required by law;

(13) To prepare and furnish information for citizens on voter registration and voting;

(14) To maintain the official list of registered voters for this state and the list of inactive voters required by this chapter; and

(15) To develop, program, build, and review ballots for use by counties and municipalities on voting systems in use in the state.

(b) As the state's chief election official, the Secretary of State shall not serve in any fiduciary capacity for the campaign of any candidate whose election will be certified by the Secretary of State. Nothing in this subsection shall prohibit the Secretary of State from organizing and operating his or her own campaign for election to public office.

History.

Code 1933, § 34-301, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 3; Ga. L. 1970, p. 347, § 2; Ga. L. 1977, p. 1053, § 1; Ga. L. 1979, p. 955, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 382, § 1; Ga. L. 1994, p. 1443, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 2; Ga. L. 2003, p. 517, § 3; Ga. L. 2005, p. 253, § 6/HB 244; Ga. L. 2019, p. 7, § 2/HB 316; Ga. L. 2023, p. 730, § 2(1)/HB 475, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(11).

Cross references.

Making of election returns to Secretary of State, Ga. Const. 1983, Art. II, Sec. II, Para. I.

Editor's notes.

Ga. L. 1994, p. 1443, § 28, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval [April 15, 1994] for the purpose of authorizing the Secretary of State to design and distribute such forms and materials and to develop, procure, and install such computer hardware and software as are required under the provisions of this Act and to exercise such administrative authority as such officer deems necessary and proper for the implementation of this Act. For all other purposes, this Act shall become effective January 1, 1995."

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Standing of Secretary of State to object to request to view election records under Open Records Act. — The Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and 45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469, 2007 Ga. App. LEXIS 1254 (2007), cert. denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. Mar. 10, 2008).

Secretary of State's office complied with its statutory duty under O.C.G.A. § 21-2-50 when it provided a potential candidate with instructions on the nomination petition process and all of the relevant Official Code sections and State Election Board Rules. Lewy v. Beazley, 270 Ga. 11, 507 S.E.2d 721.

No obligation to inform candidate of published case law. — The Secretary of State's office was not obligated to inform a potential political candidate of published case law interpreting the Code sections pertaining to the nomination process, especially when such case law is easily discoverable through reasonable research. Lewy v. Beazley, 270 Ga. 11, 507 S.E.2d 721.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34-1904 are included in the annotations for this Code section.

Removal of names from primary ballots not authorized. — Neither the State Election Board nor the Secretary of State has the authority to order candidates' names removed from primary ballots. 1974 Op. Att'y Gen. No. 74-96 (decided under former Code 1933, § 34-1904).

Certification of minor party and independent candidates. — The Secretary of State is not required to certify as candidates for national and state offices at a regular election, the names of persons as nominees of a party that did not cast five percent of the votes in the last general

election, or as independent candidates, unless the candidate shall file a petition signed by no less than five percent of the registered voters in the territory. 1945-47 Ga. Op. Att'y Gen. 238 (decided under former Code 1933, § 34-1904).

Names submitted following filing deadline. — The Secretary of State may not direct that the name of a party nominee submitted to the Secretary of State after the filing deadline be placed on the general election ballot. 1945-47 Ga. Op. Att'y Gen. 246; 1945-47 Ga. Op. Att'y Gen. 248 (decided under former Code 1933, § 34-1904).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 90 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 65.

C.J.S.
29 C.J.S., Elections, §§ 113 et seq., 148, 241 et seq., 261 et seq.

21-2-50.1. Postponement and extension of qualifying periods for elections for public office during state of emergency; limitation.

In the event the Governor declares that a state of emergency or disaster exists pursuant to Code Section 38-3-51 or a federal agency declares that a state of emergency or disaster exists, the Secretary of State is authorized to postpone or extend the qualifying periods provided in this chapter for the qualification of candidates seeking municipal, county, or state-wide office and to postpone the date of any primary, special primary, election, or special election in the affected area. The Secretary of State shall exercise the powers granted by this Code section carefully, and any such postponement or extension shall not exceed 45 days.

History.
Code 1981, § 21-2-50.1, enacted by Ga. L. 2001, p. 230, § 3; Ga. L. 2002, p. 574, § 1.

Cross references.
Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, and 45-12-29.

Law reviews.
For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Elections: Elections and Primaries Through the Pandemic," see 37 Ga. St. U.L. Rev. 241 (2020).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 303 et seq.

C.J.S.
29 C.J.S., Elections, § 144 et seq.

21-2-50.2. Obligations of the state under the federal Help America Vote Act of 2002.

(a) The Secretary of State, as the chief election official designated under the federal Help America Vote Act of 2002, shall be responsible for coordinating the obligations of the state under the federal Help America Vote Act of 2002.

(b) As the chief election official, the Secretary of State is authorized to promulgate rules and regulations to establish administrative complaint procedures as required under Section 402 of Title IV of the federal Help America Vote Act of 2002, which prescribes a process to remedy only those grievances filed under Title III of such federal act.

(c) Election related complaints filed with the Secretary of State alleging violations of Title III of the federal Help America Vote Act of 2002 shall not be subject to hearing procedures of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be resolved pursuant to rules and regulations promulgated under subsection (b) of this Code section whereby the Secretary of State shall have the authority to issue a final order for complaints filed under the federal Help America Vote Act of 2002.

History.
Code 1981, § 21-2-50.2, enacted by Ga. L. 2003, p. 517, § 4.
U.S. Code.
The Help America Vote Act of 2002, referred to in this Code section, is codified at 52 U.S.C. § 20901 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.
C.J.S.
29 C.J.S., Elections, § 261.

21-2-51. Opening of election records to members of public.

Except when otherwise provided by law, the primary and election records of the Secretary of State, including registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in his or her custody shall be open to public inspection and may be inspected and copied by any elector of the state during usual business hours at any time when they are not necessarily being used by the Secretary of State or his or her employees having duties to perform in reference thereto; provided, however, that such public inspection thereof shall only be in the presence of the Secretary of State or his or her employee and shall be subject to proper regulation for the safekeeping of such documents and subject to the further provisions of this chapter.

History.
Code 1933, § 34-302, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.
Cross references.
Penalty for willful refusal by Secretary of State to permit public inspection of election records, § 21-2-586.
Opening of public records for inspection by public generally, § 50-18-70 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Ga. L. 1949, p. 1204, § 37, are included in the annotations for this Code section.

Candidate's right to inspect lists of absentee voters. — A candidate for political office, or any other citizen, has the legal right to inspect the books and records relating to the names and addresses of persons requesting absentee ballots. 1952-53 Ga. Op. Att'y Gen. 82 (decided under Ga. L. 1949, p. 1204, § 37).

List must be legible without resort to use of other devices. — The certified list of electors required to be filed with the Secretary of State must be independently legible and a record of the list which may not be read except by resort to use of other devices, such as a microfiche of a list of electors, does not comply. 1976 Op. Att'y Gen. No. 76-24.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 90 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 65.

C.J.S.
29 C.J.S., Elections, §§ 113 et seq., 148, 241 et seq., 261 et seq.

21-2-52. Preservation of primary and election records.

All primary and election documents in the office of the Secretary of State shall be preserved therein for a period of at least 24 months; and then the same may be destroyed unless otherwise provided by law.

History.
Code 1933, § 34-303, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 3; Ga. L. 1978, p. 1004, § 3; Ga. L. 1998, p. 295, § 1.

Cross references.
Georgia Records Act, § 50-18-90 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 90 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 65.

C.J.S.
29 C.J.S., Elections, §§ 113 et seq., 148, 241 et seq., 261, 263, 264. 76 C.J.S., Records, § 51.

PART 3

SUPERINTENDENTS

21-2-70. Powers and duties.

Each superintendent within his or her county or municipality shall exercise all the powers granted to him or her by this chapter and shall perform all the duties imposed upon him or her by this chapter, which shall include the following:

(1) To receive and act upon all petitions presented by electors, the board of registrars, or the county executive committee of a political

party for the division, redivision, alteration, change, or consolidation of precincts;

(2) To receive and determine the sufficiency of nomination petitions of candidates filing notice of their candidacy with him or her in accordance with this chapter;

(3) To prepare and publish, in the manner provided by this chapter, all notices and advertisements, in connection with the conduct of elections, which may be required by law, and to transmit immediately to the Secretary of State a copy of any publication in which a call for a special primary, election, or runoff is issued;

(4) To select and equip polling places for use in primaries and elections in accordance with this chapter;

(5) To purchase, except voting machines, preserve, store, and maintain election equipment of all kinds, including voting booths and ballot boxes and to procure ballots and all other supplies for primaries and elections;

(6) To appoint poll officers and other officers to serve in primaries and elections in accordance with this chapter;

(7) To make and issue such rules, regulations, and instructions, consistent with law, including the rules and regulations promulgated by the State Election Board, as he or she may deem necessary for the guidance of poll officers, custodians, and electors in primaries and elections;

(8) To instruct poll officers and others in their duties, calling them together in meetings whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several precincts of his or her county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted;

(9) To receive from poll officers the returns of all primaries and elections, to canvass and compute the same, and to certify the results thereof to such authorities as may be prescribed by law;

(10) To announce publicly, by posting in his or her office, the results of all primaries and elections held in his or her county or municipality;

(11) In any general election at which a proposal to amend the Constitution or to provide for a new Constitution is submitted to the electors for ratification, the election superintendent shall provide copies of the summary of such proposal prepared pursuant to Article X, Section I, Paragraph II of the Constitution as provided in this paragraph. A reasonable number of copies of such summary shall be conspicuously available in each polling place;

(12) To prepare annually a budget estimate of his or her expenses under this chapter, in which shall be set forth an itemized list of expenditures for the preceding two years and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and to submit the same at the time and in the manner and form other budget estimates of his or her county or municipality are now or may hereafter be required to be filed;

(13) To conduct all elections in such manner as to guarantee the secrecy of the ballot and to perform such other duties as may be prescribed by law;

(14) To become certified by satisfactorily completing a certification program as set forth in Code Section 21-2-101; and

(15)(A) In the case of a judge of the probate court serving as the election superintendent, such person shall take an oath in the following form upon assuming the duties of election superintendent which shall apply to all primaries and elections conducted by such person throughout such person's tenure as election superintendent:

> I, _____, do swear (or affirm) that I will as superintendent duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of such primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.

(B) In the case of a board of elections, each member of the board shall take an oath in the following form upon becoming a member of the board which shall apply to all primaries and elections conducted by the board throughout such person's tenure on the board:

> I, _____, do swear (or affirm) that I will as a member of the board of elections duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of such primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.

(C) In the case of an election supervisor or designee for a board of elections or board of elections and registration, the election supervisor or designee shall take an oath in the following form upon being appointed as an election supervisor or designee of the

board which shall apply to all primaries and elections conducted by the board throughout such person's tenure:

> I, _____, do swear (or affirm) that I will duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of such primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.

(D) Each judge of the probate court serving as an election superintendent, each member of a board of elections or board of elections and registration, and each election supervisor or designee for a board of elections or board of elections and registration serving on July 1, 2011, shall take the appropriate oath as set forth in this Code section which shall apply to all primaries and elections conducted throughout such person's tenure in that position.

History.

Code 1933, § 34-401, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 4; Ga. L. 1981, p. 1718, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1997, p. 590, § 4; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2003, p. 517, § 5; Ga. L. 2008, p. 781, § 3/HB 1112; Ga. L. 2008, p. 817, § 3/HB 1098; Ga. L. 2011, p. 683, § 1/SB 82.

Administrative rules and regulations.

Ballot secrecy, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-8 are included in the annotations for this Code section.

Federal suit asserting voter purging from rolls. — In a suit asserting a county was unlawfully purging voters from the registration rolls, the court denied the defendants' motion to dismiss because the plaintiffs did not challenge the enactment of a state law, but merely the defendants' implementation and enforcement of the law; thus, the defendants were not entitled to legislative immunity. Ga. State Conf. of the NAACP v. DeKalb County Bd. of Registration Elections, 484 F. Supp. 3d 1308, 2020 U.S. Dist. LEXIS 162683 (N.D. Ga. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Performance of duties mandatory. — The use of the word "shall" in this section with respect to the duties imposed upon a probate judge, as superintendent of elections, indicates the imposition by the General Assembly upon the probate judge of a mandatory duty to perform certain enumerated functions. 1978 Op. Att'y Gen. No. U78-44.

Authorized rule. — A probate judge, acting as the superintendent of elections, has authority, pursuant to O.C.G.A. § 21-2-70(7), to adopt a rule for guidance of poll officers, custodians, and electors which

rule would advise that any person, including candidates and candidates' campaign workers, is prohibited from remaining within 250 feet of a polling place for purpose of checking electors list. 1982 Op. Att'y Gen. No. 82-41.

Power to call special primary. — While the Election Code does not specify the exact method of calling a special primary, the judge of the probate court is the officer generally having jurisdiction of primaries, and the judge is the proper person to call a special primary. 1970 Op. Att'y Gen. No. U70-128.

Superintendent calls and conducts school bond referendum. — The county school board is empowered to authorize the calling of a school bond referendum which the county election superintendent shall then call by publishing the appropriate notice. The county superintendent of elections is also the proper person to conduct a school bond referendum. 1985 Op. Att'y Gen. No. 85-18.

Election superintendent is responsible for certifying the returns of elections. 1985 Op. Att'y Gen. No. 85-18.

Costs in examining nomination petition not assessable. — The ordinary (now superintendent) is not authorized to assess the costs incurred in examining the nomination petition against the candidate submitting the petition. If no appropriations are made to cover such expenses, the ordinary may be compensated for services pursuant to the method prescribed in former Code 1933, § 24-110 (see now O.C.G.A. § 15-1-12). 1968 Op. Att'y Gen. No. 68-233.

No authority to distribute sample ballots. — The ordinary (now superintendent) does not have the authority needed to distribute sample ballots prior to the next general election; even if such authority were contained in the Election Code, it is extremely doubtful whether public funds could be used. 1968 Op. Att'y Gen. No. 68-4.

Mandamus lies to compel annual financial statement. — The duty of the probate judge, as superintendent of elections, set forth in paragraph (11) (now paragraph (12)) of this section to make annual financial statements is clear, and as there appears to be no other legal remedy by which to compel the furnishing of such information by the probate judge to the county governing authority, an action for mandamus by the county governing authority may lie to require performance by the probate judge of duties. 1978 Op. Att'y Gen. No. U78-44.

Petitions in Murray County under the home rule provisions of the constitution should be filed with the judge of the probate court, rather than with the board of elections. 1988 Op. Att'y Gen. No. U88-15.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, §§ 83, 90, 91. 26 Am. Jur. 2d, Elections, § 271 et seq.

C.J.S.

29 C.J.S., Elections, § 113 et seq.

21-2-70.1. Municipal superintendents.

(a) The municipal superintendent shall conduct, in accordance with this chapter, all municipal elections held within his or her municipality.

(b) The municipal superintendent shall be a person or committee selected by the governing authority of the municipality in a public meeting, and such selection shall be recorded in the minutes of such meeting. The municipal superintendent shall receive compensation fixed and paid by the governing authority of the municipality from municipal funds. The appointment shall be made in a public meeting, and the appointment shall be recorded in the minutes of said meeting.

In the event that a municipality fails to make an appointment, the city clerk shall serve as the municipal superintendent. A parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of a candidate shall not be eligible to serve as a municipal superintendent in any primary or election in which such candidate's name appears on the ballot.

History.

Code 1981, § 21-2-70.1, enacted by Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 4; Ga. L. 2001, p. 240, § 3; Ga. L. 2003, p. 151, § 1; Ga. L. 2003, p. 517, § 6; Ga. L. 2008, p. 781, § 4/HB 1112.

Law reviews.

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

RESEARCH REFERENCES

C.J.S.

62 C.J.S., Municipal Corporations, §§ 461, 462.

21-2-71. Payment by county or municipality of superintendent's expenses; study and report on acceptance and equitable distribution of donations.

(a) The governing authority of each county or municipality shall appropriate annually and from time to time, to the superintendent of such county or municipality, the funds that it shall deem necessary for the conduct of primaries and elections in such county or municipality and for the performance of his or her other duties under this chapter, including:

(1) Compensation of the poll officers, custodians, and other assistants and employees provided for in this chapter;

(2) Expenditures and contracts for expenditures by the superintendent for polling places;

(3) Purchase or printing, under contracts made by the superintendent, of all ballots and other election supplies required by this chapter, or which the superintendent shall consider necessary to carry out the provisions of this chapter;

(4) Maintenance of all voting equipment required by this chapter, or which the superintendent shall consider necessary to carry out this chapter; and

(5) All other expenses arising out of the performance of his or her duties under this chapter.

(b) No superintendent, county, or municipality shall take or accept any grants or gifts for purposes of administering this chapter from any source other than the State of Georgia or the federal government.

(c) The State Election Board shall study and report to the General Assembly a proposed method for accepting donations intended to facilitate the administration of elections and a method for an equitable distribution of such donations state wide by October 1, 2021.

History.

Code 1933, § 34-402, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 7; Ga. L. 2021, p. 14, § 9/SB 202; Ga. L. 2023, p. 563, § 4/SB 222, effective May 3, 2023.

The 2021 amendment, effective March 25, 2021, designated the existing provisions of this Code section as subsection (a) and added subsections (b) and (c).

The 2023 amendment, effective May 3, 2023, rewrote subsection (b), which read: "No superintendent shall take or accept any funding, grants, or gifts from any source other than from the governing authority of the county or municipality, the State of Georgia, or the federal government."

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and

other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Ga. L. 2023, p. 563, § 1/SB 222, not codified by the General Assembly, provides: "The General Assembly finds that the addition of Code Section 21-2-18 and the revisions to Code Sections 21-2-71 and 21-2-212 in this bill should not be inter-

preted as an admission by the General Assembly that existing law did not already ban the outside funding of election administration in Georgia. These clarifications and enhancements were deemed necessary because there seemed to be some confusion among certain Georgia counties as to the correct interpretation of existing law."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Expenses of school bond election must be borne by the county board of education and not the county board of commissioners. 1974 Op. Att'y Gen. No. U74-55.

Costs in examining nomination petition not assessable. — The ordinary (now superintendent) is not authorized to assess the costs incurred in examining the nomination petition against the candidate submitting the petition. If no appropriations are made to cover such expenses, the ordinary may be compensated for services pursuant to the method prescribed in former Code 1933, § 24-110 (see now O.C.G.A. § 15-1-12). 1968 Op. Att'y Gen. No. 68-233.

Setting of election costs authorized. — The board of commissioners of a county has the authority to set the amounts that will be received by the probate judge, acting as a superintendent of elections, for election costs. 1976 Op. Att'y Gen. No. U76-50.

Rejection of exorbitant bill. — A county governing authority may reject a bill for expenses submitted by a probate judge, acting as a superintendent of elections, for the conduct of an election in the event the county governing authority determines such bill to be exorbitant; however, the county governing authority must pay the expenses of a special primary even though the need for the special primary arose solely as a result of an error on the part of the probate judge. 1978 Op. Att'y Gen. No. U78-44.

Compensation included in budget of election expenses. — An ordinary (now superintendent), compensated under the fee system, may properly include in the ordinary's budget of election expenses, compensation computed from the schedule of costs found in former Code 1933, § 24-1716 (see now O.C.G.A. § 15-9-60). 1968 Op. Att'y Gen. No. 68-274.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 307.

C.J.S.

29 C.J.S., Elections, §§ 112, 121.

21-2-72. Primary and election records to be open to public.

Except when otherwise provided by law or court order, the primary and election records of each superintendent, registrar, municipal governing authority, and committee of a political party or body, including registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody, except the contents of voting machines, shall be open to public inspection and may be inspected and copied by any elector of the county or municipality during usual business hours at any time when they are not necessarily being used by the custodian or his or her employees having duties to perform in reference thereto; provided, however, that such public inspection shall only be in the presence of the

custodian or his or her employee and shall be subject to proper regulation for the safekeeping of such documents and subject to the further provisions of this chapter. The custodian shall also, upon request, if photocopying equipment is available in the building in which the records are housed, make and furnish to any member of the public copies of any of such records upon payment of the actual cost of copying the records requested.

History.
Code 1933, § 34-403, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 6; Ga. L. 1982, p. 437, §§ 1, 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 7/HB 244.

Cross references.
Penalty for willful refusal by superintendent to permit public inspection of election records, § 21-2-585.
Opening of public records for inspection by public generally, § 50-18-70 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
20 Am. Jur. 2d, Courts, § 22 et seq. 26 Am. Jur. 2d, Elections, § 271 et seq.

C.J.S.
29 C.J.S., Elections, §§ 113 et seq., 444 et seq.

21-2-73. Preservation of primary and election records.

All primary and election documents on file in the office of the election superintendent of each county, municipal governing authority, superintendent, registrar, committee of a political party or body, or other officer shall be preserved therein for a period of at least 24 months and then the same may be destroyed unless otherwise provided by law.

History.
Code 1933, § 34-404, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 7; Ga. L. 1978, p. 1004, § 4; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 8/HB 244.

Cross references.
Georgia Records Act, § 50-18-90 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
20 Am. Jur. 2d, Courts, § 22 et seq. 26 Am. Jur. 2d, Elections, § 271 et seq.

C.J.S.
29 C.J.S., Elections, §§ 113 et seq., 444 et seq.

21-2-74. Creation of board to assume duties of superintendent in counties without a board of elections and in which judge of probate court is candidate for public office.

(a) If a county does not have a board of elections and if the judge of the probate court of that county is a candidate, with opposition, for any public office in a primary or election, a board to be composed of the judge of the probate court who shall serve as chairperson, of an elector of the county named by the state Democratic executive committee, and of an elector of the county named by the state Republican executive commit-

tee shall assume the duties of the election superintendent for any such primary or election.

(b) In selecting a person to serve, the state executive committee is authorized to seek the recommendation of the county executive committee, if any; persons from the county who are active in the party; persons who are present or former officials in the party; persons who hold political office or who have sought political office as candidates of the party; and such other persons as the committee shall desire to consult.

(c) Within five days after the close of qualifying, the judge of the probate court shall notify the state Democratic and Republican party executive committees in writing of the need to appoint a member of the board. The state executive committees shall have 14 days from the close of qualifying to appoint their respective members of the board. If the state executive committee of a party has not notified the judge of the probate court of its appointment by the close of business on the fourteenth day after the close of qualifying, the judge of the probate court shall notify the chief judge of the superior court of the county. The chief judge shall appoint an elector of the county to serve on the board within seven days following the notice from the judge of the probate court. A board member may resign by giving written notice to the probate judge. In the event of the death, resignation, or other vacancy of the position of an appointed board member, the probate judge shall immediately notify the state executive committee of the appropriate party of such vacancy, and the state executive committee shall promptly fill such vacancy. If the state executive committee has not filled such vacancy within seven days after notification of such vacancy by the probate judge, the probate judge shall notify the chief judge of the superior court of the county of such vacancy and the chief judge shall appoint a person to serve within seven days after being so notified.

(d) The judge of the probate court shall swear in the other board members and shall instruct the other board members concerning their duties on the board. The board members shall begin service on the board on the date on which they take their oath as members of the board and shall serve until the judge of the probate court no longer has opposition or is no longer a candidate for public office, whichever comes first.

(e) Appointed board members shall receive a per diem of $55.00 per day for each day of service on the business of the board. Such fees shall be paid from county funds.

History.

Code 1933, § 34-405, enacted by Ga. L. 1970, p. 347, § 8; Ga. L. 1971, p. 602, § 5; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 617, § 3; Ga. L. 1996, p. 1216, § 1; Ga. L. 1997, p. 590, § 5; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 368. 46 Am. Jur. 2d, Judges, §§ 54, 121.

C.J.S.
48A C.J.S., Judges, § 280 et seq.

21-2-74.1. Acting election superintendent during vacancy.

(a) If a county does not have a board of elections and:

(1) There is a vacancy in the office of judge of the probate court that has not been filled pursuant to Code Section 15-9-10 or 15-9-11; or

(2) The judge of the probate court is incapacitated and unable to perform the duties of the election superintendent for a period of more than five days;

The chief judge of the superior court in the circuit to which the county is assigned shall appoint a qualified individual to serve as the acting election superintendent during such vacancy or incapacitation.

(b) Upon the filling of a vacancy in the office of judge of the probate court pursuant to Code Section 15-9-10 or 15-9-11, the judge of the probate court shall resume the duties of the election superintendent.

(c) The sole county commissioner or the board of county commissioners shall fix the compensation of the individual who serves as acting election superintendent until the vacancy is filled or the incapacitation ends. The compensation shall be paid from the general funds of the county.

History.
Code 1981, § 21-2-74.1, enacted by Ga. L. 2021, p. 14, § 10/SB 202.

Effective date.
This Code section became effective March 25, 2021.

Editor's notes.
Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of

conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

C.J.S.

29 C.J.S., Elections, § 108 et seq.

21-2-75. Eligibility of persons holding elective public office, or office in political party, to serve on county board of elections.

(a) No person who holds elective public office, as defined in this chapter and including every municipal office to which persons can be elected by a vote of the electors under the laws of this state, shall be eligible to serve as a member of a county board of elections during the term of such elective office; and the position of any county board of elections member shall be deemed vacant upon such member's qualifying as a candidate for elective public office, as defined in this chapter and including any municipal office to which persons can be elected by a vote of the electors under the laws of this state.

(b) No person who holds office in a political party at any level of such political party shall be eligible to serve as chairperson of a county board of elections during the term of such political party office. On and after April 15, 1996, the position of any chairperson of a county board of elections shall be deemed vacant upon such chairperson's assuming a political party office.

History.

Code 1933, § 34-605.1, enacted by Ga. L. 1978, p. 1037, § 1; Ga. L. 1996, p. 1216, § 2; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 84, 177.

C.J.S.
29 C.J.S., Elections, §§ 59, 110.

21-2-76. Eligibility of person to serve as county election superintendent.

No person who holds elective office, as defined in this chapter and including every municipal office to which persons can be elected by a vote of the electors under the laws of this state but excluding the office of probate judge, shall be eligible to serve as county or municipal election superintendent during the term of such elective office; and the position of any election superintendent other than a probate judge shall be deemed vacant upon such superintendent's qualifying as a candidate for elective public office, as defined in this chapter and including any municipal office to which persons can be elected by a vote of the electors under the laws of this state.

History.
Code 1981, § 21-2-76, enacted by Ga. L. 1996, p. 1216, § 2; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Membership on county boards of elections. — O.C.G.A. § 21-2-76 does not prohibit persons who hold office in political parties from serving as members of county boards of elections or boards of elections and registration as created under O.C.G.A. § 21-2-40. 1996 Op. Att'y Gen. No. 96-18.

21-2-77. Electronic election returns.

(a) Beginning with the election cycle in the year 2000, the superintendent of elections of each county shall provide electronically to the Secretary of State, within 45 days after the close of voting, election returns divided by precinct for each precinct in their respective counties for all primaries, elections, special primaries, special elections, and runoffs for such elections for federal or state offices held in that year or any following year.

(b) Beginning with the election cycle in the year 2002, the superintendent of elections of each county shall provide electronically to the Secretary of State, within seven days after the close of voting, election returns divided by precinct for each precinct in their respective counties for all primaries, elections, special primaries, special elections, and runoffs for such elections for federal, state, and county offices held in that year or any following year.

(c) The Secretary of State is authorized to prescribe by rule or

regulation the type of electronic format for the provision of such election returns.

History.
Code 1981, § 21-2-77, enacted by Ga. L. 2000, p. 13, § 1; Ga. L. 2003, p. 517, § 8.
Law reviews.
For note on 2000 enactment of this Code section, see 17 Ga. St. U. L. Rev. 178 (2000).

Part 4

Poll Officers

Cross references.
Interference with primaries and elections, § 21-2-566.
Penalties for offenses committed against poll officers, 21-2-569, 21-2-584, 21-2-593.
Penalty for offenses committed by poll officers, §§ 21-2-584 and 21-2-587 et seq.

21-2-90. Appointment of chief manager and assistant managers.

All elections and primaries shall be conducted in each polling place by a board consisting of a chief manager, who shall be chairperson of such board, and two assistant managers assisted by clerks. The managers of each polling place shall be appointed by the superintendent. If the political parties involved elect to do so, they may submit to the superintendent, for consideration in making such appointment, a list of qualified persons. When such lists are submitted to the appropriate office, the superintendent, insofar as practicable, shall make appointments so that there shall be equal representation on such boards for the political parties involved in such elections or primaries. The superintendent shall make each appointment by entering an order which shall remain of record in the appropriate office and shall make such order available for public inspection upon request. The order shall include the name and address of the appointee, his or her title, and a designation of the precinct and primary or election in which he or she is to serve.

History.
Code 1933, § 34-501, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 4; Ga. L. 1970, p. 347, § 9; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 9/HB 244; Ga. L. 2010, p. 914, § 2/HB 540; Ga. L. 2011, p. 683, § 2/SB 82; Ga. L. 2012, p. 995, § 4/SB 92.

JUDICIAL DECISIONS

New election managers not required. — Trial court properly denied two challengers' petition contesting a city's general election as the challengers failed to show fraud, misconduct, irregularity, or illegality; a new election manager was not required for each election; a jury trial was not warranted in the matter; and there was no basis shown to set aside the results of the runoff election. Fuller v. Thomas, 284 Ga. 397, 667 S.E.2d 587, 2008 Ga. LEXIS 807 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Appointment of persons not on parties' lists. — The superintendent may appoint persons to serve as managers who are not on political parties' lists and not affiliated with the parties, and if the superintendent also appoints some qualified persons from the lists, the superintendent must assure, insofar as the superintendent is able, that the parties have equal representation on the boards. 1974 Op. Att'y Gen. No. U74-39.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85 et seq.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

21-2-91. Appointment of clerks.

Prior to the opening of the polls in each precinct at each primary and election, the superintendent shall appoint a sufficient number of clerks to serve therein at such primary or election. If additional clerks are required during the day for the purpose of counting ballots, or for other purposes, the superintendent may appoint same.

History.
Code 1933, § 34-502, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85 et seq.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

21-2-92. Qualifications of poll officers; service during municipal election or primary; Student Teen Election Participant (STEP) program.

(a)(1) Poll officers appointed pursuant to Code Sections 21-2-90 and 21-2-91 shall be judicious, intelligent, and upright citizens of the United States, residents of or otherwise employed by the county in which they are appointed except as otherwise provided in paragraph (2) of this subsection or, in the case of municipal elections, residents of or otherwise employed by the municipality in which the election is to be held or of the county in which that municipality is located, 16 years of age or over, and able to read, write, and speak the English language. No poll officer shall be eligible for any nomination for public office or to be voted for at a primary or election at which the poll officer shall serve. No person who is otherwise holding public office, other than a political party office, shall be eligible to be appointed as or to serve as a poll officer. A parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of a candidate shall not be eligible

to serve as a poll officer in any precinct in which such candidate's name appears on the ballot in any primary or election.

(2) A poll officer may be allowed to serve in a county that adjoins the county in which such poll officer resides if, in the discretion of the election superintendent of the county in which such person resides, the waiver of such county residency or county employment requirements of paragraph (1) of this subsection do not impair the ability of the county to provide adequate staff for the performance of election duties under this chapter and if, in the discretion of the county election superintendent in which such person wishes to serve, sufficient need for more poll officers exists.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in the event that a municipal primary or election is held in conjunction with a regular county, state, or federal election, poll officers assigned by the county election superintendent to conduct such county, state, or federal election shall also be authorized to serve as poll officers to conduct such municipal election or primary and shall not be required to be residents of said municipality.

(c) Each local board of education and election superintendent shall be authorized to develop and implement through a coordinated effort a Student Teen Election Participant (STEP) program. The STEP program shall permit full-time public, private, and home schooled high school students to volunteer to work as poll officers during any primary, special, or general election. In addition to the qualifications set forth in subsection (a) of this Code section, a student participating in the STEP program shall:

(1) Be a United States citizen;

(2) Have a Georgia driver's license or Georgia state-issued identification card;

(3) Have demonstrated age-appropriate academic ability for the previous school year; and

(4) Have a history of responsible school and community behavior.

A student participating in the STEP program shall at all times while working as a poll officer remain under the supervision of an adult poll officer or manager who is 21 years of age or older. No student shall be permitted to participate in the STEP program without the written authorization of his or her parent or legal guardian and such other documentation as may be required by the local board of education or election superintendent. A student in the STEP program shall work a minimum of four but not more than six hours during a single election day and shall receive age-appropriate training for serving as a poll officer. A student who successfully participates in the STEP program

shall be counted as present and given full credit for the school day during which he or she served in the STEP program. No student shall be permitted to be absent from school or participate in the STEP program for more than two school days. The election superintendent and local board of education shall adopt mutually agreed upon rules, regulations, and policies prior to the initiation of a STEP program.

History.

Code 1933, § 34-503, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1994, p. 1406, § 1; Ga. L. 1997, p. 649, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 3/HB 540; Ga. L. 2012, p. 1026, § 1/SB 101; Ga. L. 2021, p. 14, § 11/SB 202; Ga. L. 2023, p. 730, § 2(2)/HB 475, effective July 1, 2023.

The 2021 amendment, effective March 25, 2021, added the paragraph (a)(1) designation, inserted "except as otherwise provided in paragraph (2) of this subsection" near the middle of the first sentence of paragraph (a)(1), and added paragraph (a)(2).

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, deleted "shall be" preceding "able to read," near the end of the first sentence in paragraph (a)(1).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are lim-

ited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Student attendance, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Regional Educational Services, Sec. 160-5-1-.10.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Poll officer ineligible to be candidate. — Subsection (a) of this subsection was not merely a prohibition relative to a candidate serving as a poll officer, but instead emphatically provides that a poll officer was ineligible to be a candidate. Tripp v. Holder, 119 Ga. App. 608, 168 S.E.2d 189, 1969 Ga. App. LEXIS 1184 (1969).

Effect is not to void primary, but to disqualify candidate. — While a candidate acting as a poll officer might not invalidate the primary at which the candidate served, it would disqualify the candidate to hold the office which was voted for at the primary. The effect is not to void the election but to disqualify the prospective candidate. Tripp v. Holder, 119 Ga. App. 608, 168 S.E.2d 189, 1969 Ga. App. LEXIS 1184 (1969).

OPINIONS OF THE ATTORNEY GENERAL

Registrar as poll officer. — There is no statutory prohibition against a member of the county board of registrars serving as a poll officer during a primary or election but the duties imposed upon a registrar during the conduct of a primary or election make such service as a poll officer difficult, if not impossible. 1985 Op. Att'y Gen. No. 85-38.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85.

C.J.S.
29 C.J.S., Elections, § 110.

21-2-93. Oath of office for managers and clerks.

Before entering upon their duties at any primary or election, all managers and clerks shall be duly sworn in the presence of each other. The chief manager shall first be sworn by an assistant manager, and the assistant managers and clerks shall then be sworn by the chief manager. Each of them shall immediately sign in duplicate the oath taken by him or her upon forms to be furnished by the superintendent, and the same shall be attested by the officer who administered the oath.

History.
Code 1933, § 34-504, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85.

C.J.S.
29 C.J.S., Elections, § 111.

21-2-94. Form of manager's oath.

The following shall be the form of the oath to be taken by each manager:

"I, _____, do swear (or affirm) that I will as manager duly attend the ensuing election (or primary) during the

continuance thereof, that I will not admit any person to vote, except such as I shall firmly believe to be registered and entitled to vote at such election (or primary), according to the laws of this state, that I will not vexatiously delay or refuse to permit any person to vote whom I shall believe to be entitled to vote as aforesaid, that I will use my best endeavors to prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of the said election (or primary), and that I will at all times truly, impartially, and faithfully perform my duties therein to the best of my judgment and ability."

History.
Code 1933, § 34-505, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-1202 are included in the annotations for this Code section.

Failure to take oath not ground for relief in equity. — A complaint that an election manager failed to take the required oath shows a mere irregularity; and, where it was not alleged that this in any wise affected the result of the election, it would not therefore be a ground for relief in equity. Hughes v. Griner, 208 Ga. 47, 65 S.E.2d 24, 1951 Ga. LEXIS 535 (1951) (decided under former Code 1933, § 34-1202).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85.

C.J.S.
29 C.J.S., Elections, § 111.

21-2-95. Form of clerk's oath.

The following shall be the form of the oath to be taken by each clerk:

"I, _____, do swear (or affirm) that I will as a clerk attend the ensuing election (or primary) during the continuance thereof, that I will use my best endeavors to prevent any fraud, deceit, or abuse in carrying on the same, and that I will at all times truly, impartially, and faithfully perform my duties therein to the best of my judgment and ability."

History.
Code 1933, § 34-506, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Administrative rules and regulations.
Acceptance testing, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and conduct of primaries and elections, § 183-1-12-.03.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85.

C.J.S.
29 C.J.S., Elections, § 111.

21-2-96. Administration of oaths by managers.

Each of the managers shall have the power to administer oaths to any person claiming the right to vote or in any matter or thing required to be done or inquired into by them under this chapter.

History.
Code 1933, § 34-507, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

21-2-97. Identification badges for poll officers.

Each poll officer, while in the performance of his or her duty, shall display conspicuously upon his or her person a badge showing his or her name and office; and such badge shall be supplied by the superintendent.

History.
Ga. L. 1963, p. 506, § 1; Code 1933, § 34-510, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 85, 92 et seq.

C.J.S.
29 C.J.S., Elections, § 113 et seq.

21-2-98. Compensation of poll officers.

(a) The compensation of managers and clerks serving in elections shall be fixed and paid by the superintendent or, in the case of municipal elections, by the governing authority. Compensation for such poll officers serving in a primary shall be fixed and paid by the superintendent.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in all counties of this state having a population of 200,000 or more according to the United States decennial census of 1990 or any future such census, the minimum compensation for the chief manager shall be $95.00 per diem; the minimum compensation for each assistant manager shall be $66.00 per diem; and the minimum compensation for each clerk shall be $60.00 per diem.

(c) It shall not be necessary to compensate volunteers who are appointed to serve as poll officers and who agree to perform the duties of manager or clerk without compensation.

History.
Ga. L. 1896, p. 40, §§ 1, 2; Civil Code 1910, § 82; Code 1933, § 34-1303; Ga. L. 1952, p. 197, § 1; Ga. L. 1957, p. 218, § 1; Code 1933, § 34-508, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 513, §§ 1, 2; Ga. L. 1992, p. 2590, § 2; Ga. L. 1995, p. 570, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 4/HB 540.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 85. 26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 112, 121.

21-2-99. Instruction of poll officers and workers in election procedures.

(a) The election superintendent shall provide adequate training to all poll officers and poll workers regarding the use of voting equipment, voting procedures, all aspects of state and federal law applicable to conducting elections, and the poll officers' or poll workers' duties in connection therewith prior to each general primary and general election and each special primary and special election; provided, however, such training shall not be required for a special election held between the date of the general primary and the general election. Upon successful completion of such instruction, the superintendent shall give to each poll officer and poll worker a certificate to the effect that such person has been found qualified to conduct such primary or election with the particular type of voting equipment in use in that jurisdiction. Additionally, the superintendent shall notify the Secretary of State on forms to be provided by the Secretary of State of the date when such instruction was held and the number of persons attending and completing such instruction. For the purpose of giving such instructions, the superintendent shall call such meeting or meetings of poll officers and poll workers as shall be necessary. Each poll officer shall, upon notice, attend such meeting or meetings called for his or her instruction.

(b) No poll officer or poll worker shall serve at any primary or election unless he or she shall have received instructions, as described in subsection (a) of this Code section; shall have been found qualified to perform his or her duties in connection with the type of voting equipment to be used in that jurisdiction; and shall have received a certificate to that effect from the superintendent; provided, however, that this shall not prevent the appointment of a poll officer or poll worker to fill a vacancy arising on the day of a primary or election or on the preceding day.

History.
Code 1933, § 34-509, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 4; Ga. L. 2002, p. 437, § 1; Ga. L. 2005, p. 253, § 10/HB 244.

Administrative rules and regulations.
Acceptance testing, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and conduct of primaries and elections, § 183-1-12-.03.

Law reviews.
For article, "YLD Poll Worker Program Addresses Critical Need," see 26 Ga. St. B.J. 10 (Feb. 2021).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 113 et seq., 337, 338.

21-2-100. Training of local election officials.

(a) The election superintendent and at least one registrar of the county or, in counties with boards of election or combined boards of election and registration, at least one member of the board or a designee of the board shall attend a minimum of 12 hours' training annually as may be selected by the Secretary of State. The election superintendent and at least one registrar of each municipality shall attend a minimum of 12 hours' training biennially as may be selected by the Secretary of State.

(b) The basis for the minimum requirement of training shall be two calendar years.

(c) A waiver of the requirement of minimum training, either in whole or in part, may be granted by the Secretary of State, in the discretion of the Secretary of State, upon the presentation of evidence by the election superintendent, registrar, or board that the individual was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the Secretary of State.

(d) The cost of the training shall be borne by the governing authority of each county from county funds and by the municipal governing authority from municipal funds.

(e) A superintendent or registrar and the county or municipal governing authority which employs the superintendent or registrar may be fined by the State Election Board for failure to attend the training required in this Code section.

(f) The minimum training required under this Code section shall not apply to deputy registrars.

History.
Code 1981, § 21-2-100, enacted by Ga. L. 1994, p. 1443, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 4, 28; Ga. L. 2001, p. 240, § 5; Ga. L. 2005, p. 253, § 11/HB 244.

Editor's notes.

Ga. L. 1994, p. 1443, § 28, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval [April 15, 1994] for the purpose of authorizing the Secretary of State to design and distribute such forms and materials and to develop, procure, and install such computer hardware and software as are required under the provisions of this Act and to exercise such administrative authority as such officer deems necessary and proper for the implementation of this Act. For all other purposes, this Act shall become effective January 1, 1995."

JUDICIAL DECISIONS

Federal suit asserting voter purging from rolls. — In a suit asserting a county was unlawfully purging voters from the registration rolls, the court denied the defendants' motion to dismiss because the plaintiffs did not challenge the enactment of a state law, but merely the defendants' implementation and enforcement of the law; thus, the defendants were not entitled to legislative immunity. Ga. State Conf. of the NAACP v. DeKalb County Bd. of Registration Elections, 484 F. Supp. 3d 1308, 2020 U.S. Dist. LEXIS 162683 (N.D. Ga. 2020).

21-2-101. Certification program for county and municipal election superintendents or election board designee; waiver of certification; failure to comply; remedial training; regulatory authority.

(a) All county and municipal election superintendents, chief registrars, and absentee ballot clerks or, in the case of a board of elections or a board of elections and registration, the designee of such board charged with the daily operations of such board shall become certified by completing a certification program approved by the Secretary of State within six months following their appointment. Such program may include instruction on, and may require the superintendent to demonstrate proficiency in, the operation of the state's direct recording electronic voting equipment, the operation of the voting equipment used in such superintendent's jurisdiction, and in state and federal law and procedures related to elections. The local government employing the superintendent or designee shall cover the costs, if any, incurred by such superintendent's or designee's participation in the certification program. Such certification programs shall be offered by the Secretary of State on multiple occasions before December 31 of the year in which such superintendents or designees are appointed and shall not exceed 64 hours of classroom, online, and practical instruction as authorized and approved by the Secretary of State.

(b) Reserved.

(c)(1) A full, partial, or conditional waiver of the certification requirement may be granted by the Secretary of State, in the discretion of the Secretary of State, upon the presentation of evidence by the election superintendent or board that the individual was unable to

complete such training due to medical disability, providential cause, or other reason deemed sufficient by the Secretary of State.

(2) In the event that a municipality authorizes a county to conduct its elections pursuant to Code Section 21-2-45, the municipality may be granted by the Secretary of State, in the discretion of the Secretary of State, a waiver of the certification requirement, provided that the superintendent in charge of running the municipal election shall have previously completed a certification program approved by the Secretary of State and has demonstrated a proficiency in the operation of the voting equipment used in said municipality.

(d) A superintendent and the county or municipal governing authority which employs such superintendent may be fined by the State Election Board for failure to attain the certification required in this Code section.

(e) After notice and hearing as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the State Election Board may require additional or remedial training or limit, suspend, or revoke the certification of a superintendent if such superintendent is found to have violated any provision of this chapter or any rule, regulation, or order issued by the State Election Board. In its discretion, the State Election Board may reinstate such certification.

(f) The State Election Board is authorized to promulgate, amend, or repeal rules and regulations for the implementation of this Code section. Such rules and regulations may include provisions related to additional or remedial training or the limitation, suspension, revocation, or reinstatement of a superintendent's certification issued by the Secretary of State.

History.
Code 1981, § 21-2-101, enacted by Ga. L. 2003, p. 517, § 9; Ga. L. 2005, p. 253, § 12/HB 244; Ga. L. 2007, p. 544, § 1/SB 194; Ga. L. 2008, p. 781, § 5/HB 1112; Ga. L. 2010, p. 914, § 5/HB 540; Ga. L. 2017, p. 697, § 1/HB 268; Ga. L. 2018, p. 1112, § 21/SB 365.

JUDICIAL DECISIONS

Federal suit asserting voter purging from rolls. — In a suit asserting a county was unlawfully purging voters from the registration rolls, the court denied the defendants' motion to dismiss because the plaintiffs did not challenge the enactment of a state law, but merely the defendants' implementation and enforcement of the law; thus, the defendants were not entitled to legislative immunity. Ga. State Conf. of the NAACP v. DeKalb County Bd. of Registration Elections, 484 F. Supp. 3d 1308, 2020 U.S. Dist. LEXIS 162683 (N.D. Ga. 2020).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 108 et seq.

Part 5

Local Election Officials

Effective date.
This part became effective March 25, 2021.

Editor's notes.
Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

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"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

C.J.S.

C.J.S. 29 C.J.S., Elections, § 108 et seq.

21-2-105. Local election official defined.

As used in this part, the term "local election official" means:

(1) A county board of elections or a county board of elections and registration established pursuant to Code Section 21-2-40;

(2) A judge of the probate court fulfilling the role of election superintendent; or

(3) A municipal election superintendent.

History.
Code 1981, § 21-2-105, enacted by Ga. L. 2021, p. 14, § 12/SB 202.

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-106. Performance review of local election official; role of performance review board; findings as grounds for removal.

(a) The following officials may request that a performance review of a local election official be conducted:

(1) The governing authority of the same jurisdiction as the local election official;

(2) For counties represented by more than three members of the Georgia House of Representatives and Georgia Senate, at least two members of the Georgia House of Representatives and two members of the Georgia Senate who represent the county; and

(3) For counties represented by fewer than four members of the Georgia House of Representatives and Georgia Senate, at least one member of the Georgia House of Representatives and one member of the Georgia Senate who represent the county.

Such request shall be transmitted to the State Election Board which shall appoint an independent performance review board within 30 days after receiving such resolution. The State Election Board shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the elections division of the Secretary of State and two of whom shall be local election officials or members of a county board of elections or county board of elections and registration, provided that no such appointee shall be a local election official or member of a county board of elections or county board of elections and registration for the county or municipality, as applicable, under review.

(b) It shall be the duty of a performance review board to make a thorough and complete investigation of the local election official with respect to all actions of the local election official regarding the technical competency in the maintenance and operation of election equipment,

proper administration and oversight of registration and elections, and compliance with state law and regulations. The performance review board shall issue a written report of its findings to the Secretary of State, the State Election Board, and the local governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The local governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(c) The findings of the report of the review board under subsection (b) of this Code section or of any audit or investigation performed by the State Election Board may be grounds for removal of one or more local election officials pursuant to Code Section 21-2-33.2.

History.

Code 1981, § 21-2-106, enacted by Ga. L. 2021, p. 14, § 12/SB 202; Ga. L. 2023, p. 614, § 1/SB 129, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, near the end of the undesignated language following paragraph (a)(3), inserted "or members of a county board of elections or county board of elections and registration" and "or member of a county board of elections and registration".

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-107. Authority of State Election Board to appoint independent performance review board; operation and reporting.

(a) The State Election Board shall appoint an independent performance review board on its own motion if it determines that there is evidence which calls into question the competence of a local election official regarding the oversight and administration of elections, voter registration, or both, with state law and regulations.

(b) The State Election Board shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the elections division of the office of Secretary of State and two of whom shall be local election officials, provided that none of the three appointees shall be a local election official for the county or municipality under review.

(c) The performance review board shall issue a written report of its findings to the State Election Board and the Secretary of State and the applicable local governing authority, which shall include such evaluations, judgments, and recommendations as it deems appropriate. The local governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(d) The findings of the report of the performance review board under subsection (c) of this Code section or of any audit or investigation performed by the State Election Board may be grounds for removal of a local election official pursuant to Code Section 21-2-33.2.

History.
Code 1981, § 21-2-107, enacted by Ga. L. 2021, p. 14, § 12/SB 202.
Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-108. Promulgation of rules and regulations.

The State Election Board shall promulgate such rules and regulations as may be necessary for the administration of this part.

History.
Code 1981, § 21-2-108, enacted by Ga. L. 2021, p. 14, § 12/SB 202.
Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

ARTICLE 3

REGISTRATION OF AND COMMITTEE ORGANIZATION OF POLITICAL PARTIES AND BODIES

RESEARCH REFERENCES

ALR.
Validity of percentage of vote or similar requirements for participation by political parties in primary elections, 70 A.L.R.2d 1162.

21-2-110. Filing of registration statements by political parties or bodies; amendments; filing fees; failure to file.

(a) The chief executive officer of each political party or body operating in this state shall, within 60 days after the date of its organization or after June 24, 1964, whichever is later, file with the Secretary of State a registration statement setting forth:

(1) Its name and the date and place of its creation;

(2) The general purposes for which it was created;

(3) Certified copies of its charter, bylaws, rules, and regulations, and other documents of like dignity governing its organization and operation;

(4) The address of its principal office;

(5) The names, home addresses, and titles of the persons composing its governing committee and executive officers; and

(6) Such other information as the Secretary of State may require as necessary or appropriate in the public interest.

(b) The chief executive officer of each municipal executive committee, whose state executive committee has already filed with the Secretary of State as a political party or body, shall promptly file with the city clerk of the municipality and with its state political party or body executive committee a registration statement setting forth:

(1) Its name and certified copies of its charter, bylaws, rules and regulations, and other documents of like dignity governing its organization and operation;

(2) The address of its principal office; and

(3) The names of its members, home addresses, and titles of the persons composing its governing committee and executive officers.

(c) No registration statement of a party, body, or municipal executive committee shall be filed if the name of such party, body, or municipal executive committee is identical with, or deceptively similar to, the name of any other existing party, body, or municipal executive committee which was organized earlier and is eligible at the time to file its registration statement with the Secretary of State.

(d) Within 30 days after the occurrence of a change in the information contained in any registration statement, or prior amendment thereto, the chief executive officer of the party, body, or municipal executive committee filing such statement shall file an amendment thereto setting forth the information necessary to maintain the currency of such statement.

(e) The Secretary of State shall receive a fee of $10.00 for filing each registration statement required by subsection (a) of this Code section and a fee of $2.00 for filing each amendment thereto.

(f) A political party, body, or municipal executive committee failing to file a registration statement as required by subsection (a) or (b) of this Code section at least 60 days before any primary or election at which it shall seek to have candidates on the ballot shall not have its name or the names of its candidates placed on any nomination petition, ballot, or ballot label.

History.

Code 1933, § 34-901, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1.

Cross references.

Designation by political parties of poll watchers, § 21-2-408.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 196.
C.J.S.
29 C.J.S., Elections, § 149 et seq.
ALR.
Constitutionality of candidate participation provisions for primary elections, 121 A.L.R.5th 1.

21-2-111. Establishment of state and county executive committees; membership and officers; duties; applicability of chapter to persons seeking party office in a primary.

(a) Each political party shall establish and maintain a state executive committee exercising state-wide jurisdiction and control over party affairs and a county executive committee in each county in which it holds a primary, exercising county-wide jurisdiction and control over party affairs. A party may establish and maintain such other committees as it may from time to time deem advisable. The membership of such committees shall be selected in the manner determined by the state executive committee. Each committee shall be presided over by a chairperson and shall have a secretary and such other officers as deemed advisable, and a list of all such committees shall be filed with the appropriate election official for the state or county. The state executive committee shall have the same power over municipal party executive committees as it has over county party executive committees.

(b) The state executive committee of each political party shall formulate, adopt, and promulgate rules and regulations, consistent with law, governing the conduct of conventions and other party affairs. No such rule and regulation shall be effective until copies thereof, certified by the chairperson, have been filed with the Secretary of State.

(c) The respective county executive committees of each political party shall formulate, adopt, and promulgate rules and regulations, consistent with law and the rules and regulations of the state executive committee, governing the conduct of conventions and other party affairs. No such rule and regulation shall be effective until copies thereof, certified by the chairperson, have been filed with the superintendent of the county.

(d) Any person seeking party office in a primary shall be governed by this chapter relating to a person seeking party nomination in a primary insofar as such application is practicable.

History.
Code 1933, § 34-902, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 6.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 194 et seq.
C.J.S.
29 C.J.S., Elections, § 149 et seq.
ALR.
Extent of power of political party, committee, or officer to exclude persons from participating in its primaries as voters or candidates, 97 A.L.R. 685; 151 A.L.R. 1121.

21-2-112. Hearings before state committee; suspension of powers and duties of county committee; delegation of powers by state committee.

(a) When the state executive committee of a political party has reason to believe that the orders, rules, or regulations of the state executive committee, relating to all party matters except the conduct of primaries, are not being, or will not be, fairly, impartially, or properly enforced or applied in any county by the county executive committee of the party in such county, the state executive committee shall issue to such county committee a written notice of opportunity for hearing.

(b) A notice of opportunity for hearing shall state the substance of the order which the state committee proposes to issue under subsection (e) of this Code section and advise such county committee of its right to a hearing upon request to the state committee if such request is received by it within the time specified in the notice.

(c) Whenever such county committee requests a hearing in accordance with this Code section, the state committee shall immediately set a date, time, and place for such hearing and shall forthwith notify the county committee thereof.

(d) A stenographic record of the testimony and other evidence submitted at the hearing shall be taken and filed with the state committee. Each witness appearing at the hearing shall be sworn prior to testifying.

(e) If the state committee does not receive a timely request for hearing or if a hearing is requested and conducted as provided in this Code section and the state committee determines that all or any part of the proposed relief described in the notice of opportunity for hearing should be granted, the state committee may issue an order, effective for a certain period, suspending and superseding all or any part of the powers and duties of the county committee and directing that the powers and duties which would have been exercised and performed by such county executive committee in those matters in which they have been suspended and superseded shall be exercised and performed by the persons designated by the state executive committee, who may be residents of any county of this state, notwithstanding any other provision of this chapter.

(f) The state executive committee may delegate its powers under this Code section to a subcommittee.

History. Code 1933, § 34-903, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 11; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 194 et seq.

C.J.S.
29 C.J.S., Elections, § 149 et seq.

21-2-113. Chief executive and county executive committees.

(a) Each political body shall establish and maintain a chief executive committee exercising jurisdiction and control over body affairs in the area of the state in which it operates and a county executive committee exercising county-wide jurisdiction and control over body affairs in each county in which the body operates if it operates in two or more counties. A body may establish and maintain such other committees as it may from time to time deem advisable. The membership of such committees shall be selected in the manner determined by the chief executive committee. Each committee shall be presided over by a chairperson and shall have a secretary and such other officers as deemed advisable.

(b) The chief executive committee of each political body shall formulate, adopt, and promulgate rules and regulations, consistent with law, governing the conduct of conventions and other body affairs. No such rule and regulation shall be effective until copies thereof, certified by the chairperson, have been filed with the Secretary of State.

(c) The respective county executive committees of each political body shall formulate, adopt, and promulgate rules and regulations, consistent with law and the rules and regulations of the chief executive committee, governing the conduct of conventions and other body affairs. No such rule or regulation shall be effective until a copy thereof, certified by the chairperson, has been filed with the superintendent of the county.

(d) Whenever a municipal executive committee of a political party is established, such committee shall formulate, adopt, and promulgate rules and regulations, consistent with law and the rules and regulations of the State Election Board and the state executive committee, governing the conduct of primaries, conventions, and other party affairs within the municipality. No such rule and regulation shall be effective until copies thereof, certified by the chairperson, have been filed with the clerk of the municipality.

History. Code 1933, § 34-905, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 195.
C.J.S.
29 C.J.S., Elections, § 155 et seq.
ALR.
Extent of power of political party, committee, or officer to exclude persons from participating in its primaries as voters or candidates, 70 A.L.R. 1501; 88 A.L.R. 473; 97 A.L.R. 685; 151 A.L.R. 1121.

ARTICLE 4

SELECTION AND QUALIFICATION OF CANDIDATES AND PRESIDENTIAL ELECTORS

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 34-19 are included in the annotations for this article.

Nomination by primary or by petition not unconstitutional. — Georgia has not violated the equal protection clause of the Fourteenth Amendment by making available two alternative paths for nomination of candidates, neither of which can be assumed to be inherently more burdensome than the other. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Right to endorse candidates generally. — Any political organization, however new or however small, is free to endorse any otherwise eligible person as its candidate for whatever elective public office it chooses. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Election void when conducted with complete disregard for law. — While failure to observe some of the requirements of the provisions of this former article might be mere irregularities not rendering the election void, when the election is conducted with an absolute and complete disregard for the law contained in that article, the election is void. Williams v. Cox, 214 Ga. 354, 104 S.E.2d 899, 1958 Ga. LEXIS 423 (1958) (decided under former Code 1933, Ch. 34-19).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under former statutory Code 1933, Ch. 34-10 are included in the annotations for this article.

Offices of Savannah city court and municipal court judge are county offices. 1970 Op. Att'y Gen. No. 70-124.

If special election fails, offices of justice of peace and constable are filled by election rather than appointment. 1969 Op. Att'y Gen. No. 69-59 (decided under former Code 1933, Ch. 34-10).

PART 1

GENERAL PROVISIONS

Law reviews.

For note on the 2001 amendments to this part, see 18 Ga. St. U. L. Rev. 96 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34A-111 are included in the annotations for this part.

Reservation of power by city as to voter and candidate qualifications. — Where contract between city and county authorized county to conduct a "valid election" but specifically reserved in city the power to render decisions "concerning the qualifications of electors, candidates and other matters involving factual or legal questions," county board of registration and elections did not have authority to issue a resolution recommending that appellant be disqualified. Campbell v. Fulton County Bd. of Registration & Elections, 249 Ga. 845, 295 S.E.2d 80, 1982 Ga. LEXIS 948 (1982) (decided under former Code 1933, § 34A-111).

OPINIONS OF THE ATTORNEY GENERAL

Notice of intention need not be given in advance by write-in candidate in special election. 1969 Op. Att'y Gen. No. 69-59 (decided prior to enactment of O.C.G.A. 21-2-133).

RESEARCH REFERENCES

ALR.

Construction and application of statutes and ordinances concerning establishment of residency as condition for running for municipal office, 74 A.L.R.6th 209.

21-2-130. Procedures for qualification of candidates generally.

Candidates may qualify for an election as follows:

(1) Nomination through a political party primary;

(2) Filing a notice of candidacy and affidavit and paying a qualifying fee or filing a pauper's affidavit with a pauper's petition in conjunction with:

(A) Filing a nomination petition declared lawful pursuant to Code Section 21-2-171 either as an independent candidate or as a nominee of a political body, if duly certified by the chairperson and the secretary of the political body as having been nominated in a duly constituted political body convention as prescribed in Code Section 21-2-172;

(B) Nomination for a state-wide office by a duly constituted political body convention as prescribed in Code Section 21-2-172 if the political body making the nomination has qualified to

nominate candidates for state-wide public office under the provisions of Code Section 21-2-180;

(C) Candidacy in a special election as prescribed in subsection (e) of Code Section 21-2-132;

(D) Qualifying as an incumbent candidate to succeed such incumbent as prescribed in subsection (e) of Code Section 21-2-132; or

(E) Candidacy for election to a nonpartisan office;

(3) In the case of an election for presidential electors, nomination as prescribed by rules of a political party and subsection (f) of Code Section 21-2-153; or

(4) Substitute nomination by a political party or body as prescribed in Code Section 21-2-134.

History.

Code 1933, § 34-1001, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1983, p. 1190, § 2; Ga. L. 1986, p. 890, § 1; Ga. L. 1997, p. 590, § 6; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 3; Ga. L. 2017, p. 697, § 2/HB 268.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Law reviews.

For article discussing the impact on bond issues of challenges to voting procedures, see 15 Ga. St. B. J. 15 (1978).

For note, "Georgia's Runoff Election System Has Run Its Course," see 54 Ga. L. Rev. 1063 (2020).

JUDICIAL DECISIONS

Requirement of filing nominating petitions. — While political parties may nominate candidates through primaries without submitting nominating petitions, nominees of "political bodies" and independent candidates must file nominating petitions to obtain ballot space. Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1970 U.S. Dist. LEXIS 11250 (N.D. Ga. 1970), aff'd, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Effect of federal preclearance procedure. — Where plaintiff political party held no convention in 1986 to choose its nominees but claimed it was denied ballot access by the fact that it was notified of the resolution of the federal preclearance procedure one day after the deadline for filing notice of candidacy, the court found no merit in this argument since the notice of candidacy provision, enacted a year before the June 9, 1986 preclearance determination, was not altered by the 1986 amendments in O.C.G.A. T. 21 and thus was not subject to the preclearance determination. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

Where plaintiff political body contended federal preclearance of the 1986 amendments to this title was "late," plaintiff should have complied with the unchallenged Election Code requirements of holding a convention and filing notice of candidacy. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

Substitute candidate not qualified to seek office. — In a dispute over who could run for Chief Magistrate Judge of Douglas County in the November 2022 election, the challenge by the incumbent's husband, who was a registered voter eligible to vote in the election, that the substitution of a candidate was improper

was allowed because "qualifications," as that statutory term was used, included all of the prerequisites for seeking and holding office, including the procedural requirements to seek office; and, the substitute candidate did not properly qualify to seek office as the original candidate had not secured the nomination. Thus, the Board of Elections and Registration lacked authority to put the substitute candidate on the ballot. Camp v. Williams, 314 Ga. 699, 879 S.E.2d 88, 2022 Ga. LEXIS 258 (2022).

OPINIONS OF THE ATTORNEY GENERAL

Candidate may utilize nomination petition despite the fact that a primary will be conducted. 1965-66 Op. Att'y Gen. No. 66-177 (See also 1986 Op. Att'y Gen. 86-41).

Listing of political body designation with candidate's name. — A candidate who wishes to have a political body affiliation listed on the ballot would have to comply with the certification requirements of former Code 1933, § 34-1001 (see now O.C.G.A. § 21-2-130(2)) except when the Election Code dispenses with the requirement of a nomination petition pursuant to former Code 1933, § 34-1002 (see now O.C.G.A. § 21-2-132). 1972 Op. Att'y Gen. No. 72-123.

Authority of party to refuse to qualify candidate. — The state and county executive committees of a political party have the authority to refuse to qualify a candidate upon a determination that such candidate does not meet the qualifications for nomination to a public office. 1976 Op. Att'y Gen. No. 76-90.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 249 et seq.

C.J.S.

29 C.J.S., Elections, § 234 et seq.

ALR.

Residence or inhabitancy within district or other political unit for which he is elected or appointed as a necessary qualification of officer or candidate, in absence of express provision to that effect, 120 A.L.R. 672.

Constitutionality, construction, and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office, 153 A.L.R. 641.

Construction and application of statutes and ordinances concerning establishment of residency, as condition for running for municipal office, 74 A.L.R.6th 209.

21-2-131. Fixing and publishing of qualification fees; manner of payment; distribution of fees paid.

(a) Qualification fees for party and public offices shall be fixed and published as follows:

(1)(A) The governing authority of any county or municipality, not later than February 1 of any year in which a general primary, nonpartisan election, or general election is to be held, and at least 35 days prior to the special primary or election in the case of a special primary or special election, shall fix and publish a qualifying fee for each county or municipal office to be filled in the upcoming primary or election. Except as otherwise provided in subparagraph (B) of this paragraph, such fee shall be 3 percent of the total gross salary of the office paid in the preceding calendar

year including all supplements authorized by law if a salaried office.

(B) For the offices of clerk of the superior court, judge of the probate court, sheriff, tax commissioner, and magistrate, the qualifying fee shall be 3 percent of the minimum salary specified in subsection (a) of Code Section 15-6-88, paragraph (1) of subsection (a) of Code Section 15-9-63, subsection (a) of Code Section 15-10-23, paragraph (1) of subsection (a) of Code Section 15-16-20, and paragraph (1) of subsection (b) of Code Section 48-5-183, exclusive of supplements, cost-of-living increases, and longevity increases. For the office of members of the county governing authority, the qualifying fee shall be 3 percent of the base salary established by local Act of the General Assembly or by Code Section 36-5-25 as adjusted pursuant to Code Section 36-5-24, if applicable, exclusive of compensation supplements for training provided for in Code Section 36-5-27 and cost-of-living adjustments pursuant to Code Section 36-5-28. If not a salaried office, a reasonable fee shall be set by the governing authority of such county or municipality, such fee not to exceed 3 percent of the income derived from such county office by the person holding the office for the preceding year or more than $35.00 for a municipal office;

(2) Within the same time limitation as provided in subparagraph (A) of paragraph (1) of this subsection, the Secretary of State shall fix and publish a qualifying fee for any candidate qualifying by this method with a state political party and for any candidate qualifying with the Secretary of State for a nonpartisan election and for any candidate filing with the Secretary of State his or her notice of candidacy for a general or special election. Such fee shall be 3 percent of the annual salary of the office if a salaried office, except that the fee for members of the General Assembly shall be $400.00. If not a salaried office, a reasonable fee shall be set by the Secretary of State, such fee not to exceed 3 percent of the income derived from such office by the person holding the office for the preceding year;

(3) A reasonable qualifying fee may be set according to party rule for each political party office to be filled in a primary. Such fees shall be set and published by the county or state political party not later than February 1 of the year in which the primary is to be held for the filling of such party office.

(b) Qualifying fees shall be paid as follows:

(1) The qualifying fee for a candidate in a primary shall be paid to the county or state political party at the time the candidate qualifies;

(2) The qualifying fee for all other candidates shall be paid to the

superintendent or Secretary of State at the time the notice of candidacy is filed by the candidate.

(c) Qualifying fees shall be prorated and distributed as follows:

(1) Fees paid to the county political party: 50 percent to be retained by the county political party with which the candidate qualified; 50 percent to be transmitted to the superintendent of the county with the party's certified list of candidates not later than 12:00 Noon of the third day after the deadline for qualifying in the case of a general primary and by 12:00 Noon of the day following the closing of qualifications in the case of a special primary. Such fees shall be transmitted as soon as practicable by the superintendent to the governing authority of the county, to be applied toward the cost of the primary and election;

(2) Fees paid to the state political party: 75 percent to be retained by the state political party; 25 percent to be transmitted to the Secretary of State with the party's certified list of candidates not later than 12:00 Noon of the third day after the deadline for qualifying in the case of a general primary and by 12:00 Noon of the day following the closing of qualifications in the case of a special primary. Such fees shall be transmitted as soon as practicable by the Secretary of State as follows: one-third to the state treasury and two-thirds divided among the governing authorities of the counties in the candidate's district in proportion to the population of each such county according to the last United States decennial census, such fees to be applied to the cost of holding the election;

(3) Qualification fees paid to the superintendent of the county:

(A) If the person qualifies as a candidate of a political body, 50 percent shall be transmitted to the state executive committee of the appropriate political body and 50 percent shall be retained by the superintendent of the county;

(B) If the person qualifies directly with the election superintendent as a candidate of a political party in accordance with subsection (c) of Code Section 21-2-153, 25 percent shall be transmitted to the state executive committee of the appropriate political party and 75 percent shall be retained by the superintendent of the county; and

(C) If the person qualifies as an independent or nonpartisan candidate, the superintendent of the county shall retain the entire amount of the fees.

Such fees shall be transmitted as soon as practicable by the superintendent to the governing authority of the county, to be applied toward the cost of holding the election;

(4) Qualification fees paid to the Secretary of State shall be prorated and distributed as follows:

(A) If the person qualifies as the candidate of a political body, 75 percent shall be transmitted to the appropriate political body and 25 percent shall be retained by the Secretary of State; and

(B) If the person qualifies as an independent or nonpartisan candidate, the Secretary of State shall retain the entire amount of the fees.

Such fees shall be transmitted as soon as practicable by the Secretary of State as follows: one-third to the state treasury and two-thirds divided among the governing authorities of the counties in proportion to the population of each county according to the last United States decennial census, such fees to be applied to the cost of holding the election;

(5) Qualification fees paid to the superintendent of a municipality:

(A) If the person qualifies as a candidate of a political body, 50 percent shall be transmitted to the state executive committee of the appropriate political body and 50 percent shall be retained by the superintendent of the municipality; and

(B) If the person qualifies as an independent or nonpartisan candidate, the superintendent of the municipality shall retain the entire amount of the fees.

Such fees shall be transmitted as soon as practicable by the superintendent to the governing authority of the municipality, to be applied toward the cost of holding the election.

History.

Ga. L. 1962, p. 504, § 1; Ga. L. 1963, p. 172, § 1; Code 1933, § 34-1004, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 10A; Code 1933, § 34-1013, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1974, p. 4, § 2; Ga. L. 1982, p. 897, §§ 1, 2; Ga. L. 1983, p. 884, § 6-4; Ga. L. 1983, p. 1190, § 3; Ga. L. 1987, p. 1360, § 4; Ga. L. 1988, p. 294, § 1; Ga. L. 1989, p. 10, § 1; Ga. L. 1989, p. 643, § 1; Ga. L. 1992, p. 2510, § 1; Ga. L. 1993, p. 617, § 4; Ga. L. 1995, p. 1027, § 2; Ga. L. 1997, p. 590, § 7; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1122, §§ 1, 2; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 4; Ga. L. 2001, p. 240, § 7; Ga. L. 2001, p. 269, § 4; Ga. L. 2003, p. 517, § 10; Ga. L. 2004, p. 103, § 1.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Ga. L. 1998, p. 295, § 1 and Ga. L. 1998, p. 1122, § 1 made a conflicting change in paragraph (a)(1). Because the governor signed Ga. L. 1998, p. 1122 later in time, the change made by that act takes precedence.

Law reviews.

For comment on Jenness v. Little, Civil No. 12762 (N.D. Ga. 1969), holding bar against placement of candidate's name on ballot due to inability to pay qualifying fee is denial of equal protection, see 18 J. of Pub. L. 483 (1969).

For comment on Stoner v. Fortson, Civil No. 16271 (N.D. Ga. May 11, 1972), holding fee requirement for placement on primary ballot unconstitutional, see 22 J. of Pub. L. 243 (1973).

JUDICIAL DECISIONS

Paragraph (a)(2) unconstitutional. — The fee scale set out in former paragraph (a)(2) was in violation of the equal protection clause of U.S. Const., amend. 14 and was therefore unconstitutional. Stoner v. Fortson, 359 F. Supp. 579, 1972 U.S. Dist. LEXIS 13889 (N.D. Ga. 1972) (commented on in 22 J. of Pub. L. 243 (1973)) (decided prior to 1983 amendments).

Requirement of filing fee for indigent candidate unconstitutional. — To require of an indigent independent candidate in a general election that the candidate come forward with both a nominating petition and a qualifying fee, with no other means of getting on the ballot, is a violation of equal protection. Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1970 U.S. Dist. LEXIS 11250 (N.D. Ga. 1970), aff'd, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

To prohibit candidates from getting their names on the ballot solely because they cannot post a certain amount of money is illegal and unconstitutional. Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1970 U.S. Dist. LEXIS 11250 (N.D. Ga. 1970), aff'd, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Unless alternate method of ballot access provided. — The unconstitutionality of a mandatory filing fee does not attach where the candidate can get the candidate's name on the ballot in some other fashion, either by nominating petition, primary election, or pauper's affidavit. Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1970 U.S. Dist. LEXIS 11250 (N.D. Ga. 1970), aff'd, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Reasonable filing fee permitted. — The state or a political party can impose, upon prospective candidates, a filing fee the amount of which reasonably approximates the cost of actually processing a candidate's application for a place on the ballot. Stoner v. Fortson, 359 F. Supp. 579, 1972 U.S. Dist. LEXIS 13889 (N.D. Ga. 1972) (commented on in 22 J. of Pub. L. 243 (1973)) (decided prior to 1983 amendments).

Provided it is not discriminatory. — The state or a political party can impose qualifying requirements of prospective candidates so long as those requirements would not depend upon the economic status of the candidates or the financial resources of the voters or otherwise be so burdensome as to have a discriminatory effect. Stoner v. Fortson, 359 F. Supp. 579, 1972 U.S. Dist. LEXIS 13889 (N.D. Ga. 1972) (commented on in 22 J. of Pub. L. 243 (1973)) (decided prior to 1983 amendments).

Erroneously computed qualifying fee. — Chief magistrate was entitled to the salary provided by law for the magistrate's position, and not to a higher judicial salary based upon an erroneously computed qualifying fee which the magistrate paid prior to running for office. Rowland v. Tattnall County, 260 Ga. 109, 390 S.E.2d 217, 1990 Ga. LEXIS 146 (1990), sub. op., No. S90A0569, 1990 Ga. LEXIS 220 (Ga. Apr. 19, 1990).

OPINIONS OF THE ATTORNEY GENERAL

Candidate for last one-half of an unexpired term must pay full qualification fee, just as if the candidate were running for a full term. 1970 Op. Att'y Gen. No. U70-77.

Qualification fees. — Ga. L. 1968, p. 885, § 1 authorized city's governing authority to charge qualification fees to those running for office in a general city election. 1969 Op. Att'y Gen. No. 69-330.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 264 et seq.
ALR.
Validity and effect of statutes exacting filing fees from candidates for public office, 89 A.L.R.2d 864.

21-2-132. Filing notice of candidacy, nomination petition, and affidavit; payment of qualifying fee; pauper's affidavit and qualifying petition for exemption from qualifying fee; military service.

(a) The names of nominees of political parties nominated in a primary and the names of nominees of political parties for the office of presidential elector shall be placed on the election ballot without their filing the notice of candidacy otherwise required by this Code section.

(b) Candidates seeking election in a nonpartisan election shall comply with the requirements of subsections (c) and (f) of this Code section, as modified by subsection (g) of this Code section, by the date prescribed and shall by the same date pay to the proper authority the qualifying fee prescribed by Code Section 21-2-131 in order to be eligible to have their names placed on the nonpartisan election ballots.

(c) All candidates seeking election in a nonpartisan election shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this subsection in order to be eligible to have their names placed on the nonpartisan election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

(1) Each candidate for the office of judge of the superior court, Judge of the Court of Appeals, or Justice of the Supreme Court, or the candidate's agent, desiring to have his or her name placed on the nonpartisan election ballot shall file a notice of candidacy, giving his or her name, residence address, and the office sought, in the office of the Secretary of State no earlier than 9:00 A.M. on the Monday of the eleventh week immediately prior to the election and no later than 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays;

(2) Each candidate for a county judicial office, a local board of education office, or an office of a consolidated government, or the candidate's agent, desiring to have his or her name placed on the nonpartisan election ballot shall file notice of candidacy in the office of the superintendent no earlier than 9:00 A.M. on the Monday of the eleventh week immediately prior to the election and no later than 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays;

(3)(A) Each candidate for a nonpartisan municipal office or a designee shall file a notice of candidacy in the office of the municipal superintendent of such candidate's municipality during the municipality's nonpartisan qualifying period. Each municipal superintendent shall designate the days of such qualifying period, which shall be no less than three days and no more than five days. The days of the qualifying period shall be consecutive days. Nonpartisan qualifying periods shall commence no earlier than 8:30 A.M. on the third Monday in August immediately preceding the general election and shall end no later than 4:30 P.M. on the following Friday; and, in the case of a special election, the municipal nonpartisan qualifying period shall commence no earlier than the date of the call and shall end no later than 25 days prior to the election.

(B) In any case in which no individual has filed a notice of candidacy and paid the prescribed qualifying fee to fill a particular office in a nonpartisan municipal election, the governing authority of the municipality shall be authorized to reopen qualifying for candidates at 9:00 A.M. on the Monday next following the close of the preceding qualifying period and cease such qualifying at 5:00 P.M. on the Tuesday immediately following such Monday, notwithstanding the fact that such days may be legal holidays; and

(4) In any case where an incumbent has filed notice of candidacy and paid the prescribed qualifying fee in a nonpartisan election to succeed himself or herself in office but withdraws as a candidate for such office prior to the close of the applicable qualifying period prescribed in this subsection, qualifying for candidates other than such incumbent shall be reopened at 9:00 A.M. on the Monday next following the close of the preceding qualifying period and shall cease at 5:00 P.M. on the Tuesday immediately following such reopening, notwithstanding the fact that any such days may be legal holidays.

(d) All political body and independent candidates shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this subsection in order to be eligible to have their names placed on the election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

(1) Each elector for President or Vice President of the United States, or his or her agent, desiring to have the names of his or her candidates for President and Vice President placed on the election ballot shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, in the office of the Secretary of State during the period beginning at 9:00 A.M. on the fourth Monday in June immediately prior to the election

and ending at 12:00 Noon on the Friday following the fourth Monday in June, notwithstanding the fact that any such days may be legal holidays;

(2) Each candidate for United States Senate, United States House of Representatives, or state office, or his or her agent, desiring to have his or her name placed on the election ballot shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, in the office of the Secretary of State during the period beginning at 9:00 A.M. on the Monday of the thirty-fifth week immediately prior to the election and ending at 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays, in the case of a general election. In the case of a special election to fill a federal office listed in this subsection, each candidate shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, in the office of the Secretary of State no earlier than the date of the call of the special election and no later than 60 days prior to the special election. In the case of a special election to fill a state office, each candidate shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, in the office of the Secretary of State no earlier than the date of the call of the special election and no later than 25 days prior to the special election;

(3) Each candidate for a county office, or his or her agent, desiring to have his or her name placed on the election ballot shall file notice of his or her candidacy in the office of the superintendent of his or her county during the period beginning at 9:00 A.M. on the Monday of the thirty-fifth week immediately prior to the election and ending at 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays, in the case of a general election and no earlier than the date of the call of the election and no later than 25 days prior to the election in the case of a special election;

(4) Each candidate for municipal office or a designee shall file a notice of candidacy in the office of the municipal superintendent of such candidate's municipality during the municipality's qualifying period. Each municipal superintendent shall designate the days of the qualifying period, which shall be no less than three days and no more than five days. The days of the qualifying period shall be consecutive days. Qualifying periods shall commence no earlier than 8:30 A.M. on the third Monday in August immediately preceding the general election and shall end no later than 4:30 P.M. on the following Friday; and, in the case of a special election, the municipal qualifying period shall commence no earlier than the date of the call and shall end no later than 25 days prior to the election; and

(5)(A) In extraordinary circumstances as described in Code Section 21-2-543.1, each candidate, or his or her agent, desiring to have his or her name placed on the election ballot shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, with the office of the Secretary of State no earlier than the date of the call of the special election and no later than ten days after the announcement of such extraordinary circumstances.

(B) The provisions of this subsection shall not apply where, during the 75 day period beginning on the date of the announcement of the vacancy:

(i) A regularly scheduled general election for the vacant office is to be held; or

(ii) Another special election for the vacant office is to be held pursuant to a writ for a special election issued by the Governor prior to the date of the announcement of the vacancy.

The hours of qualifying each day shall be from 8:30 A.M. until 4:30 P.M. with one hour allowed for the lunch break; provided, however, that municipalities which have normal business hours which cover a lesser period of time shall conduct qualifying during normal business hours for each such municipality. Except in the case of a special election, notice of the opening and closing dates and the hours for candidates to qualify shall be published at least two weeks prior to the opening of the qualifying period.

(e) Each candidate required to file a notice of candidacy by this Code section shall, no earlier than 9:00 A.M. on the fourth Monday in June immediately prior to the election and no later than 12:00 Noon on the second Tuesday in July immediately prior to the election, file with the same official with whom he or she filed his or her notice of candidacy a nomination petition in the form prescribed in Code Section 21-2-170, except that such petition shall not be required if such candidate is:

(1) A nominee of a political party for the office of presidential elector when such party has held a national convention and therein nominated candidates for President and Vice President of the United States;

(2) Seeking office in a special election;

(3) An incumbent qualifying as a candidate to succeed himself or herself;

(4) A candidate seeking election in a nonpartisan election; or

(5) A nominee for a state-wide office by a duly constituted political body convention, provided that the political body making the nomi-

nation has qualified to nominate candidates for state-wide public office under the provisions of Code Section 21-2-180.

(f) Each candidate required by this Code section to file a notice of candidacy shall accompany his or her notice of candidacy with an affidavit stating:

(1) His or her full name and the name as the candidate desires it to be listed on the ballot. The surname of the candidate shall be the surname of the candidate as it appears on the candidate's voter registration card unless the candidate provides proof that his or her surname as it appears on the candidate's registration card is incorrect in which event the correct name shall be listed. After such name is submitted to the Secretary of State or the election superintendent, the form of such name shall not be changed during the election for which such notice of candidacy is submitted;

(2) His or her residence, with street and number, if any, and his or her post office address;

(3) His or her profession, business, or occupation, if any;

(4) The name of his or her precinct;

(5) That he or she is an elector of the county or municipality of his or her residence eligible to vote in the election in which he or she is a candidate;

(6) The name of the office he or she is seeking;

(7) That he or she is eligible to hold such office;

(8) That the candidate has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction of domestic violence under the laws of this state or any other state or of the United States, or that the candidate's civil rights have been restored and that at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude;

(9) That he or she will not knowingly violate this chapter or rules and regulations adopted under this chapter; and

(10) Any other information as may be determined by the Secretary of State to be necessary to comply with federal and state law.

The affidavit shall contain such other information as may be prescribed by the officer with whom the candidate files his or her notice of candidacy.

(g) A pauper's affidavit may be filed in lieu of paying the qualifying fee otherwise required by this Code section and Code Sections 21-2-131

and 21-2-138 of any candidate who has filed a qualifying petition as provided for in subsection (h) of this Code section. A candidate filing a pauper's affidavit instead of paying a qualifying fee shall under oath affirm his or her poverty and his or her resulting inability to pay the qualifying fee otherwise required. The form of the affidavit shall be prescribed by the Secretary of State and shall include a financial statement which lists the total income, assets, liabilities, and other relevant financial information of the candidate and shall indicate on its face that the candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The affidavit shall contain an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The following warning shall be printed on the affidavit form prepared by the Secretary of State, to wit: "WARNING: Any person knowingly making any false statement on this affidavit commits the offense of false swearing and shall be guilty of a felony." The name of any candidate who subscribes and swears to an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required shall be placed on the ballot by the Secretary of State or election superintendent, as the case may be.

(h) No candidate shall be authorized to file a pauper's affidavit in lieu of paying the qualifying fee otherwise required by this Code section and Code Section 21-2-138 unless such candidate has filed a qualifying petition which complies with the following requirements:

(1) A qualifying petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to one-fourth of 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. A qualifying petition of a candidate for any other office shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. However, in the case of a candidate seeking an office for which there has never been an election or seeking an office in a newly constituted constituency, the percentage figure shall be computed on the total number of registered voters in the constituency who would have been qualified to vote for such office had the election been held at the last general election and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected;

(2) Each person signing a qualifying petition shall declare therein that he or she is a duly qualified and registered elector of the state

entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, which shall be subscribed and sworn to by such circulator before a notary public and shall set forth:

(A) His or her residence address, giving municipality with street and number, if any;

(B) That each signer manually signed his or her own name with full knowledge of the contents of the qualifying petition;

(C) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and

(D) That, to the best of the affiant's knowledge and belief, the signers are registered electors of the state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit;

(3) A qualifying petition shall be in the form and manner determined by the Secretary of State and approved by the State Elections Board;

(4) No qualifying petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same; and

(5) A qualifying petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

No notary public may sign the petition as an elector or serve as a circulator of any petition which he or she notarized. Any and all sheets of a petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected.

(i) Reserved.

(j)(1) Notwithstanding any provision of law to the contrary, any elected public officer who is performing ordered military duty, as

defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such public officer was elected.

(2) Where the giving of written notice of candidacy is required, any elected public officer who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate may, during the time such officer is on ordered military duty, be performed by an agent designated in writing by the absent public officer.

History.

Ga. L. 1922, p. 97, § 3; Code 1933, § 34-1904; Ga. L. 1948, Ex. Sess., p. 3, § 1; Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1001, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 224, § 1; Ga. L. 1968, p. 826, § 1; Ga. L. 1968, p. 858, § 1; Ga. L. 1968, p. 871, § 5; Ga. L. 1969, p. 329, § 8B; Code 1933, § 34-1002, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1971, p. 602, § 2; Ga. L. 1977, p. 1053, § 3; Ga. L. 1978, p. 1004, § 16; Ga. L. 1979, p. 955, § 4; Ga. L. 1981, p. 1718, §§ 4, 11; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1983, p. 884, § 6-5; Ga. L. 1983, p. 930, § 3; Ga. L. 1983, p. 1190, § 4; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 780, § 1; Ga. L. 1984, p. 1038, § 1; Ga. L. 1985, p. 496, § 3; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 890, § 2; Ga. L. 1987, p. 647, § 1; Ga. L. 1987, p. 1360, § 5; Ga. L. 1989, p. 643, § 2; Ga. L. 1990, p. 243, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 1406, § 2; Ga. L. 1995, p. 1027, § 3; Ga. L. 1996, p. 145, § 1; Ga. L. 1997, p. 590, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 23, § 1; Ga. L. 1999, p. 52, § 5; Ga. L. 2001, p. 269, § 5; Ga. L. 2001, Ex. Sess., p. 325, § 2; Ga. L. 2002, p. 437, § 1; Ga. L. 2003, p. 517, § 11; Ga. L. 2005, p. 253, §§ 13, 14/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2008, p. 781, § 6/HB 1112; Ga. L. 2009, p. 311, § 2/HB 156; Ga. L. 2011, p. 678, § 1/HB 158; Ga. L. 2011, p. 683, § 2A/SB 82; Ga. L. 2012, p. 995, § 5/SB 92; Ga. L. 2014, p. 1, § 1/HB 310; Ga. L. 2016, p. 173, §§ 2, 3/SB 199; Ga. L. 2016, p. 864, § 21/HB 737; Ga. L. 2017, p. 697, § 3/HB 268; Ga. L. 2018, p. 1112, § 21/SB 365.

Cross references.

Persons ineligible to hold public office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

False swearing generally, § 16-10-71.

Duty of Secretary of State as to tabulation, computation, and canvassing of votes for state and federal officers, § 21-2-499

Penalties for offenses relating to nomination petitions, §§ 21-2-563, 21-2-564.

Penalty for making of false statement in connection with filing of notice of candidacy, § 21-2-565.

Qualifying in absentia for magistrates serving on active duty, § 15-10-20.1.

Editor's notes.

Ga. L. 1983, p. 930, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article II, Section I, Paragraph III and Article II, Section II, Paragraph III of the Constitution of the State of Georgia."

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Ga. L. 2011, p. 683, § 21A/SB 82, not codified by the General Assembly, provides, in part that: "Section 2A of this Act shall become effective on July 1, 2011, only if House Bill 158 is passed by the General Assembly during the 2011 regular session and is approved by the Governor or becomes law without such approval. Otherwise, Section 2A shall be repealed by operation of law on such date and shall be of no force and effect." House Bill 158 was Ga. L. 2011, p. 678, which was approved on May 13, 2011.

Law reviews.

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

JUDICIAL DECISIONS

Qualifying fee requirement not unconstitutional. — Summary judgment was granted to the state on an equal protection claim brought by a minor political party, its candidates, and its registered voters where the fact that Georgia provided an alternative way to access the general-election ballot through votes obtained in the prior election did not mean that the state had created a distinction violative of the right to equal protection. Cowen v. Raffensperger, 537 F. Supp. 3d 1327, 2021 U.S. Dist. LEXIS 181544 (N.D. Ga. 2021), rev'd in part, aff'd, 22 F.4th 1227, 2022 U.S. App. LEXIS 390 (11th Cir. 2022).

Effect of federal preclearance procedure. — Where plaintiff political party held no convention in 1986 to choose its nominees but claimed it was denied ballot access by the fact that it was notified of the resolution of the federal preclearance procedure one day after the deadline for filing notice of candidacy, the court found no merit in this argument since the notice of candidacy provision, enacted one year before the June 9, 1986 preclearance determination was not altered by the 1986 amendments in O.C.G.A. T. 21 and thus was not subject to the preclearance determination. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

Where plaintiff political body contended federal preclearance of the 1986 amendments to O.C.G.A. T. 21 was "late," plaintiff should have complied with the unchallenged Election Code requirements of holding a convention and filing notice of candidacy. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

Lawsuit seeking name placed on ballot properly dismissed. — Trial court properly dismissed a nominee's lawsuit seeking to have the nominee's name placed upon the ballot for the 2016 general election as an independent candidate for President of the United States because the notices of candidacy were submitted 11 days after the deadline set forth in O.C.G.A. § 21-2-132(d)(1) and the nominee failed to have enough signatures verified; thus, the nominee was not entitled to have the name placed on the ballot. De La Fuente v. Kemp, 300 Ga. 79, 793 S.E.2d 89, 2016 Ga. LEXIS 712 (2016).

For comparison of procedures followed by political parties and political bodies, see McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Eligibility as independent candidate. — Anyone who wishes, and who is otherwise eligible, may be an independent candidate for any office in this state. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Unpublished decision: District court properly denied an independent candidate's motion for a preliminary injunction to block enforcement of the Georgia deadline statute in future presidential elections because the candidate failed to demonstrate that the candidate would suffer irreparable harm if a preliminary injunction did not issue and gave no reason to believe that the district court would be unable to rule on the candidate's requests for a permanent injunction and declaratory relief in the next three and a half years. De La Fuente v. Kemp, 679 Fed. Appx. 932, 2017 U.S. App. LEXIS 2665 (11th Cir. 2017), dismissed without prejudice, No. 1:16-CV-2937-MHC, 2017 U.S. Dist. LEXIS 122722 (N.D. Ga. Mar. 17, 2017).

Unpublished decision: District court properly denied an independent candi-

date's motion for preliminary injunctive relief as to the 2016 presidential election insofar as the candidate sought to preclude enforcement of the Georgia deadline statute for the 2016 elections because the appellate court could not prevent what had already occurred. De La Fuente v. Kemp, 679 Fed. Appx. 932, 2017 U.S. App. LEXIS 2665 (11th Cir. 2017), dismissed without prejudice, No. 1:16-CV-2937-MHC, 2017 U.S. Dist. LEXIS 122722 (N.D. Ga. Mar. 17, 2017).

Write-in votes. — The procedures provided for in O.C.G.A. §§ 21-2-132(c) and (d), 21-2-170(b) and (g), 21-2-171(a), 21-2-172, and 21-2-322(7) relate only to the right to have the name of a candidate or the nominee of a "political body" printed on the ballot. There is no limitation whatever, procedural or substantive, on the right of a voter to write in on the ballot the name of the candidate of the candidate's choice and to have that write-in vote counted. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Candidate's filing of a driver's license change of address form four days before declaring candidacy did not cause the candidate to be qualified to vote in the district the candidate sought to represent. Haynes v. Wells, 273 Ga. 106, 538 S.E.2d 430, 2000 Ga. LEXIS 824 (2000).

Sufficiency of evidence for making false statements in filing for candidacy for political office. — In a case in which defendant appealed a conviction for false swearing, in violation of O.C.G.A. § 16-10-71(a), challenging the sufficiency of the evidence, the state failed to prove that defendant had the requisite criminal intent to support the conviction when defendant signed a declaration of candidacy for county commissioner as set forth in O.C.G.A. §§ 21-2-132 and 21-2-153. Pursuant to O.C.G.A. § 17-7-95(c), a judgment imposing a sentence following a plea of nolo contendere was considered a conviction for some purposes; however, such a conviction did not disqualify defendant from holding public office or otherwise deprive defendant of any civil or political rights, and there was no evidence that defendant intended to deceive the election board or the voters, as defendant believed that the 1986 nolo contendere conviction to a charge of aggravated assault was generally known in the county. Spillers v. State, 299 Ga. App. 854, 683 S.E.2d 903, 2009 Ga. App. LEXIS 1009 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34A-901 and former Code Section 21-3-91 are included in the annotations for this Code section.

Qualifications for United States House of Representatives. — Insofar as they require a candidate for the United States House of Representatives to be a registered voter or to be a resident of the district from which election is sought, Ga. Const. 1983, Art. II, Sec. II, Para. III and O.C.G.A. § 21-2-132 are unenforceable. 1983 Op. Att'y Gen. No. 83-62.

The only qualifications a candidate must possess to be eligible to seek the office of United States representative are those enumerated in U.S. Const., Art. I, Sec. II, Para. II. 1983 Op. Att'y Gen. No. 83-62.

When candidates to fill vacancy must qualify. — Candidates seeking to fill the vacancy in the office of Judge of the Probate Court of Gwinnett County must qualify at the time specified in the call for the special election to fill the vacancy, which time cannot be earlier than the date of the call and not later than 25 days prior to the election, which must be held in conjunction with the 1986 November general election. 1986 Op. Att'y Gen. No. 86-26.

Methods for having name placed on ballot. — The law set forth two methods by which an individual might have their name placed on an election ballot; the first method entailed a candidate's filing notice of candidacy in the office of the municipal superintendent within a prescribed time limit; the second method involved the nomination of a candidate by a political

party or body. 1971 Op. Att'y Gen. No. 71-185 (decided under former Code 1933, § 34A-901).

Powers of city charter as to ballot requirements. — A city charter cannot eliminate one of the methods by which a candidate might have a candidate's name placed on the ballot; however, it can impose the additional requirement that a nominating petition be presented by those not nominated by a political party. 1971 Op. Att'y Gen. No. 71-185 (decided under former Code 1933, § 34A-901).

Nominating petition is necessary only if the municipality's charter or ordinance so requires it, and it must be in the form prescribed by law. 1971 Op. Att'y Gen. No. 71-185 (decided under former Code 1933, § 34A-901).

Authority of election superintendent to set dates for qualifying in special elections. — An election superintendent is vested with the authority and discretion to choose a period between the date of the call for the special election and 25 days prior to the special election for candidates to qualify to seek office in a special election. 1986 Op. Att'y Gen. No. 86-33.

Candidate for party primary need not qualify in person. — Absent a requirement to the contrary in the procedural rules of the candidate's party, a candidate for a party nomination in a primary is not required to qualify in person. 1976 Op. Att'y Gen. No. U76-23.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 213 et seq.

C.J.S.

29 C.J.S., Elections, §§ 179, 239 et seq.

ALR.

Mandatory or directory character of statutory provision as to time of filing candidate's application or certificate of nomination before primary or election, 72 A.L.R. 290.

Construction and application of statutes and ordinances concerning establishment of residency as condition for running for municipal office, 74 A.L.R.6th 209.

21-2-132.1. Certification of presidential electors for independent candidate for President or Vice President of the United States; qualification.

(a) An independent candidate for the office of President or Vice President of the United States shall file with the Secretary of State not later than the Friday before the opening of qualifying for such office as provided in subsection (d) of Code Section 21-2-132 a slate of candidates for the office of presidential elector which such independent candidate has certified as being the presidential electors for such independent candidate.

(b) The candidates for presidential electors certified by an independent candidate for the office of President or Vice President of the United States shall then qualify for election to such office in accordance with Code Section 21-2-132.

(c) An independent candidate for the office of President or Vice President of the United States may certify a number of candidates for the office of presidential elector that is equal to or less than the number of presidential electors who may be elected from the State of Georgia.

History.
Code 1981, § 21-2-132.1, enacted by Ga. L. 2019, p. 7, § 3/HB 316.

Cross references.
The Executive Branch, U.S. Const., art. II.

21-2-133. Giving notice of intent of write-in candidacy; filing of affidavit; limitations on candidacy; certification of candidates.

(a) No person elected on a write-in vote shall be eligible to hold office unless notice of his or her intention of candidacy was filed and published no earlier than January 1 and no later than the Tuesday after the first Monday in September prior to the election for county, state, and federal elections; no later than seven days after the close of the qualifying period for nonpartisan elections in the case of nonpartisan elections for state or county offices; no later than seven days after the close of the municipal qualifying period for municipal elections in the case of a general election; or no later than seven days after the close of the special election qualifying period for a special election by the person to be a write-in candidate or by some other person or group of persons qualified to vote in the subject election, as follows:

(1) In a state general or special election, notice shall be filed with the Secretary of State and published in a newspaper of general circulation in the state;

(2) In a general or special election of county officers, notice shall be filed with the superintendent of elections in the county in which he or she is to be a candidate and published in the official organ of the same county; or

(3) In a municipal general or special election, notice shall be filed with the superintendent and published in the official gazette of the municipality holding the election.

In the event that such intention of candidacy is filed and published by a person or group of persons other than the candidate, such person or group of persons shall also file a written, notarized authorization by the candidate for such filing and publication.

(b) In addition to the requirements contained in subsection (a) of this Code section, the person or persons giving notice of intention of candidacy for a write-in candidate shall also file, with the appropriate official specified in paragraph (1), (2), or (3) of subsection (a) of this Code section, a copy of the notice as published with an affidavit stating that the notice has been published and including the name of the newspaper and the date of publication, not later than the fifth day after the deadline for filing and publishing such notice. The affidavit may be made by the person giving notice of intention of candidacy or by the publisher of the newspaper in which the notice was published or by an employee of the newspaper designated by the publisher.

(c) No person shall be eligible as a write-in candidate in a special or general primary, a special or general primary runoff, or in a special or general election runoff.

(d) No person shall be eligible as a write-in candidate in a general or special election if such person was a candidate for nomination or election to the same office in the immediately preceding primary.

(e)(1) The Secretary of State shall certify and transmit to the election superintendent of each county affected within five days following the deadline for the submission by write-in candidates of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the Secretary of State for such general or special election.

(2) The county election superintendent shall certify within five days following the deadline for the submission by write-in candidates for county offices of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the county election superintendent for county offices for such general or special election.

(3) The municipal election superintendent shall certify within five days following the deadline for the submission by write-in candidates for municipal offices of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the municipal election superintendent for municipal offices for such general or special election.

History.

Code 1933, § 34-1017, enacted by Ga. L. 1978, p. 1004, § 17; Ga. L. 1979, p. 963, § 1; Ga. L. 1987, p. 417, § 1; Ga. L. 1987, p. 1360, § 6; Ga. L. 1989, p. 682, § 1; Ga. L. 1997, p. 590, § 9; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 6; Ga. L. 2001, p. 230, § 5; Ga. L. 2001, p. 269, § 6; Ga. L. 2001, Ex. Sess., p. 325, § 3; Ga. L. 2002, p. 437, § 1; Ga. L. 2005, p. 253, § 15/HB 244; Ga. L. 2011, p. 678, § 2/HB 158; Ga. L. 2012, p. 995, § 6/SB 92; Ga. L. 2017, p. 697, § 4/HB 268.

Cross references.

Persons not eligible to hold office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

Votes for write in candidates, § 21-2-486.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Construction with O.C.G.A. § 21-2-494. — Trial court did not err in finding that O.C.G.A. § 21-2-494 was constitutional, despite an election challenger's

claim that it impermissibly allowed the exclusion of votes for write-in candidates and because it did not require that voters be provided with notice that write-in votes for unqualified candidates would not be counted, as: (1) it was undisputed that nine write-in votes were cast for individuals who were not eligible to hold office, as these people did not give proper notice of their intention of candidacy; (2) no voters were disenfranchised; (3) each voter was given the opportunity to vote for the candidate of his or her own choosing; and (4) the legislature properly exercised its power when it limited the counting of write-in votes to votes cast for qualified write-in candidates. Brodie v. Champion, 281 Ga. 105, 636 S.E.2d 511, 2006 Ga. LEXIS 833 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-910 are included in the annotations for this Code section.

Nominating petition is necessary only if the municipality's charter or ordinance so requires it, and it must be in the form prescribed by the law. 1971 Op. Att'y Gen. No. 71-185 (decided under former Code 1933, § 34A-910).

Official qualified to declare write-in candidate ineligible. — The appropriate official to declare a write-in candidate for county office ineligible who has received a majority of votes cast in the election but did not publish notice of intention of candidacy at least 20 days prior to the election is the superintendent of elections of the county. 1984 Op. Att'y Gen. No. 84-84.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, §§ 232, 255, 295 et seq.

ALR.

Elections: validity of state or local legislative ban on write-in votes, 69 A.L.R.4th 948.

21-2-134. Withdrawal, death, or disqualification of candidate for office; return of qualifying fee; nomination certificate.

(a)(1) A candidate nominated at any primary election or nominated by means other than a primary may withdraw as a candidate at the ensuing general election by filing a notarized affidavit of withdrawal with the Secretary of State, if nominated for a state office; the county superintendent, if nominated for a county office; or the municipal superintendent, if nominated for a municipal office. If the ballots have been printed, the Secretary of State, the county superintendent, or the municipal superintendent may reprint the ballots to omit the name of the withdrawn candidate. All votes cast for the withdrawn candidate shall be void and shall not be counted. Prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted. No vacancy on the

ballot for a general election or for a nonpartisan election shall be filled except by reason of the death or disqualification of a candidate or the withdrawal of a candidate as provided in paragraph (2) of subsection (b) of this Code section.

(2) A candidate in a general or special primary may withdraw as a candidate after qualifying but prior to the date of the general or special primary by filing a notarized affidavit of withdrawal with the Secretary of State, if qualifying for a state office; the county election superintendent, if qualifying for a county office; or the municipal superintendent, if qualifying for a municipal office. A candidate of a political body or an independent candidate in a general or special election may withdraw as a candidate after qualifying but prior to the date of the general or special election by filing a notarized affidavit of withdrawal with the Secretary of State, if qualifying for a state office; the county election superintendent, if qualifying for a county office; or the municipal superintendent, if qualifying for a municipal office. If the ballots have been printed, the Secretary of State, the county election superintendent, or the municipal superintendent may reprint the ballots to omit the name of the withdrawn candidate. All votes cast for the withdrawn candidate shall be void and shall not be counted. Prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted.

(b)(1) Any vacancy in any party nomination filled by a primary created by reason of the death or disqualification of a candidate occurring after nomination may be filled in the following manner:

(A) In the case of a public office to be filled by the vote of the electors of this entire state in which the vacancy occurs after nomination but at least ten days prior to the election to fill the public office sought by such candidate, the vacancy may be filled by a substitute nomination made by a convention composed of the delegates of the county executive committee of such party in each county of this state. Immediately upon such vacancy occurring, the state executive committee or a subcommittee thereof appointed for the purpose shall fix a time within six days of the occurrence of such vacancy; shall select and provide a convenient place for the holding of such a convention, which shall be open to the public; and shall give notice thereof to the chairperson and secretary of each county executive committee. Each county executive committee shall be entitled to select the number of delegates apportioned to it by the state executive committee; provided, however, that each county executive committee shall be entitled to select at least one delegate. Such apportionment of delegates

among the counties shall be based substantially upon the population of this state according to the last United States decennial census or upon the number of votes cast within this state for the party's candidates for presidential electors in the last presidential election. A two-thirds' majority of the delegates of such county executive committees shall constitute a quorum for the transaction of business, and a majority of the delegates present while a quorum exists shall be sufficient to fill such nomination by a substitute nomination. Each delegate shall have one vote, and all votes taken shall be by a roll-call vote. The records of the convention shall be filed with the state executive committee. In the event such a vacancy in party nomination shall occur during the ten days preceding the day of such an election, such vacancy may be filled by a substitute nomination made by the state executive committee or a subcommittee thereof appointed for that purpose;

(B) In the case of a public office for which a candidate must qualify with the state executive committee, except a public office to be filled by the vote of the electors of the entire state, the nomination may remain vacant or may be filled at the decision of the state executive committee of the party. The decision whether to fill such vacancy shall be made by the state executive committee by 4:00 P.M. on the next business day following the actual knowledge of the death or disqualification of the candidate. The decision of the state executive committee shall be immediately transmitted to the Secretary of State. If the Secretary of State has not been notified of the decision of the state executive committee by 4:30 P.M. on the next business day following the actual knowledge of the vacancy, it shall be conclusively presumed that the state executive committee has decided not to fill the vacancy. If the state executive committee decides not to fill the vacancy, the nomination shall remain vacant. If the state executive committee decides to fill the vacancy, the vacancy shall be filled by a substitute nomination made by the state executive committee or a subcommittee thereof appointed for that purpose;

(C) In the case of a public office for which a candidate must qualify with the county executive committee, the nomination may remain vacant or may be filled at the decision of the state executive committee of the party. The state executive committee or a subcommittee thereof may determine on its own whether to fill the vacancy but is authorized, though not required, to seek the recommendation of any of the following persons for the purpose of determining whether to fill the vacancy: the county executive committee, if any; persons from the area who are active in the party; persons who are present or former officials of the party;

persons who presently hold political office or have sought political office as candidates of the party; or such other persons as the committee or subcommittee may desire to consult. The decision whether to fill such vacancy shall be made by the state executive committee by 4:00 P.M. on the next business day following the actual knowledge of the death or disqualification of the candidate. The decision of the state executive committee shall be immediately transmitted to the county superintendent. If the county superintendent has not been notified of the decision of the state executive committee by 4:30 P.M. on the next business day following the actual knowledge of the vacancy, it shall be conclusively presumed that the state executive committee has decided not to fill the vacancy. If the state executive committee decides not to fill the vacancy, the nomination shall remain vacant. If the state executive committee decides to fill the vacancy, the vacancy shall be filled by a substitute nomination made by the state executive committee or a subcommittee thereof appointed for that purpose. The state executive committee or a subcommittee thereof may determine on its own who shall fill the vacancy as a substitute nominee but is authorized, though not required, to seek the recommendation of any of the following persons for the purpose of determining the most suitable substitute nomination: the county executive committee, if any; persons from the area who are active in the party; persons who are present or former officials of the party; persons who presently hold political office or have sought political office as candidates of the party; or such other persons as the committee or subcommittee may desire to consult; and

(D) In the case of a public office for which a candidate must qualify with the municipal executive committee, the nomination may remain vacant or may be filled at the decision of the municipal executive committee of the party. The decision whether to fill such vacancy shall be made by the municipal executive committee by 4:00 P.M. on the next business day following the actual knowledge of the death or disqualification of the candidate. The decision of the municipal executive committee shall be immediately transmitted to the municipal superintendent. If the municipal superintendent has not been notified of the decision of the municipal executive committee by 4:30 P.M. on the next business day following the actual knowledge of the vacancy, it shall be conclusively presumed that the municipal executive committee has decided not to fill the vacancy. If the municipal executive committee decides not to fill the vacancy, the nomination shall remain vacant. If the municipal executive committee decides to fill the vacancy, the vacancy shall be filled by a

substitute nomination made by the municipal executive committee or a subcommittee thereof appointed for that purpose.

(2) Any vacancy which occurs in any party nomination filled by a primary and which is created by reason of the withdrawal of a candidate 60 or more days prior to the date of the election shall be filled as follows:

(A) By the person seeking nomination in such primary who received the second highest total of votes cast in such primary for that office, provided that such person received not less than 40 percent of the votes cast for that office; or

(B) In the event no person received the vote total required under subparagraph (A) of this paragraph, such vacancy shall be filled in the same manner as provided in subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection, as appropriate.

(3) Any vacancy which occurs in any party nomination filled by a primary and which is created by reason of the withdrawal of a candidate less than 60 days prior to the date of the election shall not be filled. If the ballots have been printed, the Secretary of State, the county superintendent, or the municipal superintendent may reprint the ballots to omit the name of the withdrawn candidate. All votes cast for the withdrawn candidate shall be void and shall not be counted. Prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted.

(c) Any vacancy occurring in any body nomination or party nomination filled by means other than by primary, by reason of the withdrawal, death, or disqualification of any candidate after nomination, may be filled by a substitute nomination made by such committee as is authorized by the rules and regulations of the party or body to make nominations in the event of vacancies on the party or body ticket.

(d) If the withdrawal, death, or disqualification of a candidate after nomination for any public office would at the time of such event result in there being no candidate for that office on the ballot in the general election, then the vacancy shall be filled by a special primary which shall be open only to the party of such deceased, withdrawn, or disqualified candidate and the office shall be filled by a special election as provided in Code Section 21-2-540.

(e) The qualifying fee shall be returned to the candidate in the event such candidate withdraws, dies, or is disqualified prior to the close of the qualifying period; however, after the close of the qualifying period, the qualifying fee shall not be returned to the candidate for any reason

including withdrawal, death, or disqualification; provided, however, that, if such disqualification is the result of an error or negligence of the officer with whom such candidate qualified and not the result of any action of the candidate and such error or negligence is verified in writing by the Secretary of State, such fee may be refunded to the candidate.

(f) Upon the making of any such substitute nomination, in the manner prescribed in subsection (b) or (c) of this Code section, it shall be the duty of the chairperson and secretary of the convention or committee making the nomination to file with the Secretary of State or with the superintendent, as the case may be, a nomination certificate which shall be signed by such chairperson and secretary. Every such certificate of nomination shall be sworn to by the chairperson and secretary before an officer qualified to administer oaths.

(g) In the event of the death of a candidate on the ballot in a nonpartisan election prior to such nonpartisan election, such candidate's name shall remain on the ballot and all votes cast for such candidate shall be counted. If the deceased candidate receives the requisite number of votes to be elected, such contest shall be handled as a failure to fill the office under Code Section 21-2-504. If the deceased candidate receives enough votes to be in a run-off election, such run-off election shall be conducted as provided in Code Section 21-2-501 and the candidates in such runoff shall be determined in accordance with paragraph (2) of subsection (a) of Code Section 21-2-501.

History.

Code 1933, § 34-1003, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 6; Ga. L. 1969, p. 329, §§ 9, 10; Ga. L. 1970, p. 347, § 13; Ga. L. 1978, p. 781, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1985, p. 1430, § 1; Ga. L. 1987, p. 1360, § 7; Ga. L. 1989, p. 643, § 3; Ga. L. 1994, p. 1406, § 3; Ga. L. 1995, p. 408, § 1; Ga. L. 1996, p. 26, § 1; Ga. L. 1997, p. 590, § 10; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2001, p. 269, § 7; Ga. L. 2005, p. 253, § 16/HB 244; Ga. L. 2008, p. 781, § 7/HB 1112; Ga. L. 2012, p. 995, § 7/SB 92; Ga. L. 2021, p. 14, § 13/SB 202.

The 2021 amendment, effective March 25, 2021, added subsection (g).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the

lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots

will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Substitute candidate not qualified to seek office. — In a dispute over who could run for Chief Magistrate Judge of Douglas County in the November 2022 election, the challenge by the incumbent's husband, who was a registered voter eligible to vote in the election, that the substitution of a candidate was improper was allowed because "qualifications," as that statutory term was used, included all of the prerequisites for seeking and holding office, including the procedural requirements to seek office; and, the substitute candidate did not properly qualify to seek office as the original candidate had not secured the nomination. Thus, the Board of Elections and Registration lacked authority to put the substitute candidate on the ballot. Camp v. Williams, 314 Ga. 699, 879 S.E.2d 88, 2022 Ga. LEXIS 258 (2022).

Notice of candidate's withdrawal. — Evidence that the notices that a primary candidate withdrew were conspicuously placed in the polling was sufficient evidence that the notices were substantially in compliance with the requirements of O.C.G.A. § 21-2-134(a)(2) that notices be "conspicuous." Banker v. Cole, 278 Ga. 532, 604 S.E.2d 165, 2004 Ga. LEXIS 833 (2004).

When notices required by O.C.G.A. § 21-2-134(a)(2) that a candidate in a primary election withdrew did not state that votes for the withdrawn candidate would not be counted, the notices did not substantially comply with by O.C.G.A. § 21-2-134(a)(2), because both the fact of the candidate's withdrawal and the effect of voting for the withdrawn candidate had to be included in the notice. Banker v. Cole, 278 Ga. 532, 604 S.E.2d 165, 2004 Ga. LEXIS 833 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Withdrawal from primary after qualifying deadline. — If a qualified candidate withdraws from a primary to accept another appointment after the qualifying deadline, but before the primary is held, the party may not re-open qualifications for candidates in such primary. 1970 Op. Att'y Gen. No. U70-140.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 209 et seq.
C.J.S.
29 C.J.S., Elections, §§ 181, 182.
ALR.
Power of political party or its officials to withdraw nominations, 155 A.L.R. 186.

21-2-135. Designation of specific office sought where office has multiple officeholders with same title.

(a)(1) In the case of a public office having multiple officeholders with the same title, each candidate, including write-in candidates, shall designate the specific office he or she is seeking, name the person such candidate is seeking to succeed, and give such other appropriate designation as may be required by the Secretary of State or election superintendent each time such candidate qualifies with his or her party in the case of a primary, files a notice of candidacy in the case of an election, or files a notice of candidacy as a write-in candidate. The designation of the specific office and the name of the person whom a candidate is seeking to succeed in the case of a public office having multiple officeholders shall be entered on the ballot and ballot labels in such manner that in the ensuing primary or election such candidate shall only oppose the other candidate or candidates, if any, who designated the same specific office and the same name.

(2) In the case of a candidate, including a write-in candidate, seeking one of two or more municipal public offices, each having the same title and each being filled at the same election by the vote of the same electors, the applicable municipal charter or ordinance provisions shall govern whether such candidate shall designate the specific office he or she is seeking. If required to designate the specific office, the candidate shall name his or her incumbent or give other appropriate designation as specified in the charter or ordinance. Such designation shall be entered on the ballot and ballot labels in such manner that in the ensuing municipal primary or election such candidate shall only oppose the other candidate or candidates, if any, designating the same specific office.

(b) In the case of the office of judge of a state court, judge of a superior court, Judge of the Court of Appeals, or Justice of the Supreme Court, the name of the person such candidate is seeking to succeed and such other designation as may be required by the Secretary of State or election superintendent shall be included in the title of the office on the ballot in all nonpartisan elections.

History.
Code 1933, § 34-1002, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1015, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1983, p. 1190, § 5; Ga. L. 1984, p. 133, § 1; Ga. L. 1991, p. 631, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 7; Ga. L. 2001, p. 269, § 8.

Editor's notes.
Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 225, 230.

C.J.S.
29 C.J.S., Elections, § 198 et seq.

21-2-136. Restriction on number of offices for which an individual may be nominated or be a candidate at any one election.

No person shall be nominated, nor shall any person be a candidate in a primary, election, or special election, for more than one of the following public offices to be filled at any one election or special election: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, United States senator or representative in Congress, Public Service Commissioner, Justice of the Supreme Court, Judge of the Court of Appeals, members of the Senate and House of Representatives of the General Assembly, judge of superior court, district attorney, any elected county officer, and any elected municipal officer.

History.
Code 1933, § 34-1014, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1984, p. 1, § 1; Ga. L. 1986, p. 855, § 4; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 8; Ga. L. 2001, p. 240, § 8.

OPINIONS OF THE ATTORNEY GENERAL

Application. — Candidate on ballot in special congressional primary may not be permitted to run at same time in general election for General Assembly. 1982 Op. Att'y Gen. No. U82-30.

Candidate who was on ballot in the August 10, 1982, general primary for state senator, State House of Representatives, or county commissioner may qualify and have that candidate's name placed on ballot in special congressional primary. 1982 Op. Att'y Gen. No. 82-67.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 219, 230.

C.J.S.
29 C.J.S., Elections, § 198 et seq.

21-2-137. Qualifying with two political parties; qualifying as independent or political body candidate and as political party candidate.

No person shall qualify with any political party as a candidate for nomination to any public office when such person has qualified for the same primary with another political party as a candidate for nomination by that party for any public office; nor shall a state, county, or

municipal executive committee of any political party certify any person as the candidate of that party when such person has previously qualified as a candidate for nomination for any public office for the same primary with another political party. No person shall file a notice of candidacy as an independent or political body candidate for any public office when such person has qualified for the same office to be filled at the same election with any political party; nor shall any person qualify with any political party when such person has filed a notice of candidacy as an independent or political body candidate for the same office to be filled at the same election.

History.
Code 1933, § 34-1016, enacted by Ga. L. 1975, p. 686, § 1; Ga. L. 1983, p. 535, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 255 et seq.
C.J.S.
29 C.J.S., Elections, § 236.
ALR.
Constitutionality, construction, and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office, 153 A.L.R. 641.

21-2-138. Nonpartisan elections for judicial offices.

The names of all candidates who have qualified with the Secretary of State for the office of judge of a superior court, Judge of the Court of Appeals, or Justice of the Supreme Court of this state and the names of all candidates who have qualified with the election superintendent for the office of judge of a state court shall be placed on the ballot in a nonpartisan election to be held and conducted jointly with the general primary in each even-numbered year. No candidates for any such office shall be nominated by a political party or by a petition as a candidate of a political body or as an independent candidate. Candidates for any such office shall have their names placed on the nonpartisan portion of each ballot by complying with the requirements prescribed in Code Section 21-2-132 specifically related to such nonpartisan candidates and by paying the requisite qualifying fees as prescribed in Code Section 21-2-131. Candidates shall be listed on the official ballot in a nonpartisan election as provided in Code Sections 21-2-284.1 and 21-2-285.1, respectively. Except as otherwise specified in this chapter, the procedures to be employed in conducting the nonpartisan election of judges of state courts, judges of superior courts, Judges of the Court of Appeals, and Justices of the Supreme Court shall conform as nearly as practicable to the procedures governing general elections; and such general election procedures as are necessary to complete this nonpartisan election process shall be adopted in a manner consistent with such nonpartisan elections.

History.
Code 1933, § 34-1016, enacted by Ga. L. 1975, p. 1251, § 1; Ga. L. 1983, p. 1190, § 6; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 1490, § 7; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 9; Ga. L. 2005, p. 253, § 17/HB 244; Ga. L. 2011, p. 678, § 3/HB 158.

Editor's notes.
Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Law reviews.
For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For comment, "Awakening a Slumbering Giant: Georgia's Judicial Selection System After *White* and *Weaver*," see 56 Mercer L. Rev. 1035 (2005).

For note, "The Case of the Vanishing Supreme Court Contest: *Barrow v. Raffensperger* Eliminates the Power of the People to Elect their Appellate, Superior, and State Court Judges," see 72 Mercer L. Rev. 957 (2021).

JUDICIAL DECISIONS

Agreement to change to retention election system unconstitutional. — In an action challenging Georgia's judicial election system under the Voting Rights Act, 42 U.S.C. § 1973 et seq. (now 52 U.S.C. Section 20501), and the federal Constitution, a proposed consent decree that would have established retention elections instead of direct elections was rejected because it would have impermissibly decreased the power of the electorate in violation of the constitutional and statutory law of the state. Brooks v. State Bd. of Elections, 848 F. Supp. 1548, 1994 U.S. Dist. LEXIS 3272 (S.D. Ga. 1994).

OPINIONS OF THE ATTORNEY GENERAL

Reelection of Supreme Court Justice appointed to fill vacancy. — When the Governor appoints to fill a vacancy on the Supreme Court, the appointee must stand for reelection in the nonpartisan judicial primary and also during the next general election in November, which is more than six months after his or her appointment. 1992 Op. Att'y Gen. No. U92-7.

Election of clerks of state court on partisan basis. — In enacting Ga. Const. 1983, Art. VI, Sec. VII, Para. I and O.C.G.A. §§ 21-2-138 and 21-2-139, the General Assembly did not intend to place the election of clerks of state court on a nonpartisan basis unless the General Assembly so provided by special legislation. 1985 Op. Att'y Gen. No. U85-6.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 255 et seq.

C.J.S.
29 C.J.S., Elections, § 236.

21-2-139. Nonpartisan elections authorized; conduct.

(a) Notwithstanding any other provisions of this chapter to the contrary, the General Assembly may provide by local Act for the election in nonpartisan elections of candidates to fill county judicial offices, offices of local boards of education, and offices of consolidated governments which are filled by the vote of the electors of said county or political subdivision. Except as otherwise provided in this Code section, the procedures to be employed in such nonpartisan elections shall

conform as nearly as practicable to the procedures governing nonpartisan elections as provided in this chapter. Except as otherwise provided in this Code section, the election procedures established by any existing local law which provides for the nonpartisan election of candidates to fill county offices shall conform to the general procedures governing nonpartisan elections as provided in this chapter, and such nonpartisan elections shall be conducted in accordance with the applicable provisions of this chapter, notwithstanding the provisions of any existing local law. For those offices for which the General Assembly, pursuant to this Code section, provided by local Act for election in nonpartisan primaries and elections, such offices shall no longer require nonpartisan primaries. Such officers shall be elected in nonpartisan elections held and conducted in conjunction with the general primary in even-numbered years in accordance with this chapter without a prior nonpartisan primary. This Code section shall apply to all nonpartisan elections for members of consolidated governments. All nonpartisan elections for members of consolidated governments shall be governed by the provisions of this Code section and shall be considered county elections and not municipal elections for the purposes of this Code section. Nonpartisan elections for municipal offices shall be conducted on the dates provided in the municipal charter.

(b) Either a political party, as defined in this chapter, or a nonpartisan municipal executive committee duly registered with the city clerk may conduct a municipal primary for the purpose of electing its own officials or nominating candidates for municipal elections. Every primary held for such purpose shall be presided over and conducted in the manner prescribed by the rules and regulations of such party or nonpartisan municipal executive committee, not inconsistent with the law and the rules and regulations of the State Election Board; provided, however, that all such primaries must be conducted in such manner as to guarantee the secrecy of the ballot.

(c) Municipalities may provide by their charter or by ordinance that no political party shall conduct primaries for the purpose of nominating candidates for municipal elections; provided, however, that the existing provisions of any charter or ordinance prohibiting primaries by political parties shall not be repealed by this subsection.

History.

Code 1981, § 21-2-139, enacted by Ga. L. 1983, p. 1190, § 7; Ga. L. 1985, p. 496, § 4; Ga. L. 1994, p. 131, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 10; Ga. L. 2005, p. 253, § 18/HB 244; Ga. L. 2011, p. 678, § 4/HB 158; Ga. L. 2012, p. 995, § 9/SB 92; Ga. L. 2018, p. 1112, § 21/SB 365.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Ga. L. 2012, p. 995, § 45/SB 92, not codified by the General Assembly, provides that: "Section 9 of this Act is not

intended by the General Assembly to change the effect of existing law but only to clarify the intent of the General Assembly in enacting the original legislation."

Ga. L. 2012, p. 995, § 46(b)/SB 92, not codified by the General Assembly, provides that: "Section 9 of this Act shall become effective on the first date upon which candidates may begin qualifying for the general primary in 2012; provided, however, that if implementation of Section 9 is not permissible on such date under the federal Voting Rights Act of 1965, as amended, then Section 9 shall become effective on January 1, 2013."

The United States Department of Justice objected to Section 9 (which added the sixth and seventh sentences in subsection (a)) under Section 5 of the Voting Rights Act of 1965, as amended, on December 21, 2012. However, in the case of Howard v. Augusta-Richmond County Commission, Case No. 1:14-cv-00097-JRH-BKE, United States District Court for the Southern District of Georgia, Augusta Division, decided May 13, 2014, the court found that, in light of the holding of the United States Supreme Court in Shelby County v. Holden, 133 S.Ct. 2612, 186 L. Ed. 2d 651 (2013), such objection under Section 5 was unenforceable and Section 9 was effective.

Administrative rules and regulations.

Ballot secrecy, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Election of clerks of state court on partisan basis. — In enacting Ga. Const. 1983, Art. VI, Sec. VII, Para. I and O.C.G.A. §§ 21-2-138 and 21-2-139, the General Assembly did not intend to place the election of clerks of state court on a nonpartisan basis unless the General Assembly so provided by special legislation. 1985 Op. Att'y Gen. No. U85-6.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, §§ 223, 224.

C.J.S.

29 C.J.S., Elections, § 198 et seq.

21-2-140. [Repealed] Mandatory drug testing for candidates.

History.

Code 1981, § 21-2-140, enacted by Ga. L. 1990, p. 2015, § 1; Ga. L. 1992, p. 1612, §§ 1-3; repealed by Ga. L. 1998, p. 295, § 1, effective January 1, 1999.

Part 2

Political Party and Nonpartisan Primaries

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided under former Code 1933, Title 34 are included in the annotations for this part.

Applicability of state election laws to party primary. — Whenever a political party holds a primary in this state, it is by law an integral part of the election machinery. Once a decision to hold a primary is made, state statutes take hold and direct every essential step from registration and qualification of voters to the placing of the names of the nominees on

the general election ballot. King v. Chapman, 62 F. Supp. 639, 1945 U.S. Dist. LEXIS 1841 (D. Ga. 1945), aff'd, 154 F.2d 460, 1946 U.S. App. LEXIS 2069 (5th Cir. 1946) (decided under former Code 1933, Title 34).

21-2-150. Date of general primary.

Whenever any political party holds a primary to nominate candidates for public offices to be filled in the ensuing November election, such primary shall be held on the Tuesday of the twenty-fourth week prior to the November general election in each even-numbered year or, in the case of municipalities, on the third Tuesday in July in each odd-numbered year.

History.

Ga. L. 1953, Jan.-Feb. Sess., p. 244, § 8; Ga. L. 1953, Nov.-Dec. Sess., p. 335, § 2; Ga. L. 1961, p. 432, § 1; Ga. L. 1962, p. 15, § 1; Code 1933, § 34-801, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1971, p. 602, § 1; Ga. L. 1980, p. 1256, § 2; Ga. L. 1983, p. 1190, § 8; Ga. L. 1984, p. 133, § 1; Ga. L. 1989, p. 643, § 4; Ga. L. 1996, p. 101, § 1; Ga. L. 1997, p. 590, § 11; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 11; Ga. L. 2001, Ex. Sess., p. 325, § 6; Ga. L. 2011, p. 535, § 1/HB 302; Ga. L. 2014, p. 1, § 2/HB 310.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 225.

C.J.S.

29 C.J.S., Elections, § 198 et seq.

21-2-151. Conduct of political party primaries.

(a) A political party shall nominate its candidates for public office in a primary. Except for substitute nominations as provided in Code Section 21-2-134 and nomination of presidential electors, all nominees of a political party for public office shall be nominated in the primary preceding the general election in which the candidates' names will be listed on the ballot.

(b) The primary held for such purposes shall be conducted by the superintendent in the same manner as prescribed by law and by rules and regulations of the State Election Board and the superintendent for general elections. Primaries of all political parties shall be conducted jointly.

History.

Code 1933, § 34-1005, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1004, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1983, p. 1190, § 9; Ga. L. 1984, p. 133, § 1; Ga. L. 1998, p. 295, § 1;

Ga. L. 2001, p. 269, § 12; Ga. L. 2005, p. 253, § 19/HB 244; Ga. L. 2012, p. 995, § 8/SB 92.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

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Qualifying fee of unqualified candidate not refundable. — The qualifying fee of a candidate who, subsequent to the payment of the fee, is held to be unqualified to run for the office may not be refunded to the candidate. 1983 Op. Att'y Gen. No. 83-38.

Limitation on listing party affiliation on ballot. — A candidate in an election may not list party affiliation on the ballot unless the candidate has been nominated in a primary or unless the candidate falls within certain statutory exceptions to this rule. 1970 Op. Att'y Gen. No. U70-120.

It is possible to hold a special primary at the same time as the general primary. 1970 Op. Att'y Gen. No. U70-120.

Only the judge of the probate court may call a special primary. 1970 Op. Att'y Gen. No. U70-128.

Reelection of Supreme Court Justice appointed to fill vacancy. — When the Governor appoints to fill a vacancy on the Supreme Court, the appointee must stand for reelection in the nonpartisan judicial primary and also during the next general election in November, which is more than six months after his or her appointment. 1992 Op. Att'y Gen. No. U92-7.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 225 et seq.

C.J.S.

29 C.J.S., Elections, § 198 et seq.

ALR.

Constitutionality of statute relating to power of committee or officials of political party, 62 A.L.R. 924.

State court jurisdiction over contest involving primary election for member of Congress, 68 A.L.R.2d 1320.

Validity of percentage of vote or similar requirements for participation by political parties in primary elections, 70 A.L.R.2d 1162.

21-2-152. Conduct of primaries generally; run-off primary.

(a) Primaries shall be held and conducted in all respects in accordance with this chapter relating to general elections and the provisions of this chapter relating to general elections shall apply thereto, insofar as practicable and not inconsistent with any other provisions of this chapter. All such primaries shall be conducted in each precinct by the poll officers, by the use of the same equipment and facilities, so far as practicable, as are used for such general elections.

(b) A political party, in nominating a candidate for public office in a municipal primary, may also nominate persons to serve as poll officers for such primaries, and the superintendent shall consider such nominations but shall have discretion to appoint poll officers for each polling place in each precinct.

(c) A run-off primary shall be a continuation of the primary and only persons who were entitled to vote in the primary shall be entitled to vote therein; and only those votes cast for the persons designated for the runoff shall be counted in the tabulation and canvass of the votes cast. Any elector who votes in the primary of one party shall not be eligible to vote in a primary runoff of any other party other than a primary runoff of the party in whose primary such elector voted.

History.
Code 1933, § 34-1005, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1008, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 3/SB 82.

OPINIONS OF THE ATTORNEY GENERAL

Subsection (a) of this section allows for instances where the general election and primary procedures must differ. 1970 Op. Att'y Gen. No. U70-100.

Calling of special primary. — While the Election Code does not specify the exact method of calling a special primary, the judge of the probate court is the officer generally having jurisdiction of primaries, and the judge is the proper person to call a special primary. 1970 Op. Att'y Gen. No. U70-128.

It is possible to hold a special primary at the same time as the general primary. 1970 Op. Att'y Gen. No. U70-120.

21-2-153. Qualification of candidates for party nomination in a state or county primary; posting of list of all qualified candidates; filing of affidavit with political party by each qualifying candidate; performance of military service does not create vacancy.

(a) A candidate for any party nomination in a state or county primary may qualify by either of the two following methods:

(1) Payment of a qualifying fee pursuant to Code Section 21-2-131; or

(2)(A) The submission of a pauper's affidavit by any candidate who has filed a qualifying petition as provided for in subsection (a.1) of this Code section, by which the candidate under oath affirms his or her poverty and his or her resulting inability to pay the qualifying fee otherwise required. The form of the affidavit shall be prescribed by the Secretary of State and shall include a financial statement which lists the total income, assets, liabilities, and other relevant financial information of the candidate and shall indicate on its face that the candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The affidavit shall contain an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The following warning shall be printed on the affidavit form prepared by the Secretary of State, to wit: "WARNING: Any person

knowingly making any false statement on this affidavit commits the offense of false swearing and shall be guilty of a felony." The name of any candidate who subscribes and swears to an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required shall be placed on the ballot by the Secretary of State or election superintendent, as the case may be.

(B) If a candidate seeks to qualify for a county or militia district office, the pauper's affidavit and financial statement shall be presented to the county political party; otherwise, the candidate shall file his or her pauper's affidavit and financial statement with the state political party.

(a.1) No candidate shall be authorized to file a pauper's affidavit in lieu of paying the qualifying fee otherwise required by this Code section and Code Section 21-2-131 unless such candidate has filed a qualifying petition which complies with the following requirements:

(1) A qualifying petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to one-fourth of 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. A qualifying petition of a candidate for any other office shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. However, in the case of a candidate seeking an office for which there has never been an election or seeking an office in a newly constituted constituency, the percentage figure shall be computed on the total number of registered voters in the constituency who would have been qualified to vote for such office had the election been held at the last general election and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected;

(2) Each person signing a qualifying petition shall declare therein that he or she is a duly qualified and registered elector of the state entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. A signature shall be stricken from the petition when the signer so requests prior to the presenta-

tion of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, setting forth:

(A) His or her residence address, giving municipality with street and number, if any;

(B) That each signer manually signed his or her own name with full knowledge of the contents of the qualifying petition;

(C) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and

(D) That, to the best of the affiant's knowledge and belief, the signers are registered electors of this state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit;

(3) A qualifying petition shall be in the form and manner determined by the Secretary of State and approved by the State Elections Board;

(4) No qualifying petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same; and

(5) A qualifying petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

(b) Unless otherwise provided by law, all candidates for party nomination in a state or county primary shall qualify as such candidates in accordance with the procedural rules of their party; provided, however, that no person shall be prohibited from qualifying for such office if he or she:

(1) Meets the requirements of such procedural rules;

(2) Is eligible to hold the office which he or she seeks;

(3) Is not prohibited from being nominated or elected by provisions of Code Section 21-2-7 or 21-2-8; and

(4) If party rules so require, affirms his or her allegiance to his or her party by signing the following oath:

"I do hereby swear or affirm my allegiance to the (name of party) Party."

(c)(1)(A) In the case of a general state or county primary, the candidates or their agents shall commence qualifying at 9:00 A.M.

on the Monday of the eleventh week immediately prior to the state or county primary and shall cease qualifying at 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays. All qualifying for federal and state offices shall be conducted in the state capitol.

(B) Reserved.

(C) In the case of a special primary for a federal office, the candidate shall qualify no earlier than the date of the call for the special primary and no later than 60 days immediately prior to the date of such special primary, and such qualifying period shall be open for a minimum of two and one-half days. In the case of a special primary for any other office, the candidate shall qualify no earlier than the date of the call for the special primary and no later than 25 days immediately prior to the date of such special primary, and such qualifying period shall be open for a minimum of two and one-half days.

(D) In any case where an incumbent has qualified as a candidate to succeed himself or herself in office but withdraws as a candidate for such office prior to the close of the applicable qualifying period prescribed in this paragraph, qualifying for candidates other than such incumbent shall be reopened at 9:00 A.M. on the Monday next following the close of the preceding qualifying period and shall cease at 5:00 P.M. on the Tuesday immediately following such reopening, notwithstanding the fact that any such days may be legal holidays.

(2) If a political party has not designated at least 14 days immediately prior to the beginning of qualifying a party official in a county with whom the candidates of such party for county elective offices shall qualify, the election superintendent of the county shall qualify candidates on behalf of such party. The election superintendent shall give notice in the legal organ of the county at least three days before the beginning of qualifying giving the dates, times, and location for qualifying candidates on behalf of such political party.

(d)(1) Within two hours after the qualifications have ceased, the county executive committee of each political party shall post at the office of the county election superintendent a list of all candidates who have qualified with such executive committee, and the state executive committee of each political party shall provide a list of all candidates who have qualified with such committee to the office of the Secretary of State. If the election superintendent qualifies the candidates for a political party in accordance with subsection (c) of this Code section, the election superintendent shall post at his or her office a list of all the candidates who have qualified with such superintendent for such political party.

(2) Except as otherwise provided in Code Section 21-2-154, it shall be unlawful for any person to add or remove any candidates from either of the lists provided for in paragraph (1) of this subsection following the posting of such lists unless such candidates have died, withdrawn, or been disqualified. Any person who violates this paragraph shall be guilty of a misdemeanor.

(e) Each candidate for party nomination described in subsection (a) of this Code section shall file an affidavit with the political party at the time of his or her qualifying stating:

(1) His or her full name and the name as the candidate desires it to be listed on the ballot. The surname of the candidate shall be the surname of the candidate as it appears on the candidate's voter registration card. After such name is certified by the political party to the Secretary of State or the election superintendent, the form of such name shall not be changed during the primary and election for which such affidavit is submitted;

(2) His or her residence, with street and number, if any, and his or her post office address;

(3) His or her profession, business, or occupation, if any;

(4) The name of his or her precinct;

(5) That he or she is an elector of the county of his or her residence eligible to vote in the primary election in which he or she is a candidate for nomination;

(6) The name of the office he or she is seeking;

(7) That he or she is eligible to hold such office;

(8) That the candidate has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude under the laws of this state or any other state or of the United States, or that the candidate's civil rights have been restored and that at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude;

(9) That he or she will not knowingly violate this chapter or rules or regulations adopted under this chapter; and

(10) Any other information as may be determined by the Secretary of State to be necessary to comply with federal and state law.

(f) Candidates for the office of presidential elector or their agents who have been nominated in accordance with the rules of a political party shall qualify beginning at 9:00 A.M. on the Monday of the

thirty-fifth week prior to the November general election in the year in which a presidential election shall be held and shall cease qualifying at 12:00 Noon on the Friday immediately following such Monday, notwithstanding the fact that any such days may be legal holidays. All qualifying for the office of presidential elector shall be conducted in the state capitol.

(g)(1) Notwithstanding any provision of law to the contrary, any elected public officer who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such public officer was elected.

(2) Where the giving of written notice of candidacy is required, any elected public officer who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate may, during the time such officer is on ordered military duty, be performed by an agent designated in writing by the absent public officer.

History.

Code 1933, § 34-1006, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1966, p. 501, § 1; Ga. L. 1969, p. 329, § 11; Code 1933, § 34-1005, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1974, p. 4, § 1; Ga. L. 1975, p. 575, § 1; Ga. L. 1976, p. 205, § 1; Ga. L. 1977, p. 1053, § 4; Ga. L. 1978, p. 1004, § 18; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 930, § 4; Ga. L. 1984, p. 1038, § 2; Ga. L. 1985, p. 206, § 1; Ga. L. 1985, p. 496, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 647, § 2; Ga. L. 1987, p. 1360, § 8; Ga. L. 1989, p. 643, § 5; Ga. L. 1989, p. 903, § 1; Ga. L. 1990, p. 243, § 2; Ga. L. 1992, p. 2510, § 2; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 617, § 5; Ga. L. 1994, p. 1406, §§ 4, 5; Ga. L. 1996, p. 145, § 2; Ga. L. 1997, p. 590, § 12; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 9; Ga. L. 2001, Ex. Sess., p. 325, § 7; Ga. L. 2003, p. 517, §§ 12-14; Ga. L. 2005, p. 253, § 20/HB 244; Ga. L. 2009, p. 311, § 3/HB 156; Ga. L. 2011, p. 535, § 2/HB 302; Ga. L. 2011, p. 683, § 4/SB 82; Ga. L. 2012, p. 995, § 10/SB 92; Ga. L. 2014, p. 1, § 3/HB 310.

Cross references.

Persons ineligible to hold public office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

False swearing generally, § 16-10-71.

Penalty for making of false statement in connection with qualifying as candidate for party nomination, § 21-2-565.

Qualifying in absentia for magistrates serving on active duty, § 15-10-20.1.

Editor's notes.

Ga. L. 1983, p. 930, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article II, Section I, Paragraph III and Article II, Section II, Paragraph III of the Constitution of the State of Georgia."

Law reviews.

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

For note, "Georgia's Runoff Election System Has Run Its Course," see 54 Ga. L. Rev. 1063 (2020).

JUDICIAL DECISIONS

Sufficiency of indictment for making false statements. — Indictment for "making false statements in notice of candidacy" was sufficient even though it did not expressly allege that defendant filed an affidavit at the time of defendant's qualifying; the indictment did expressly allege that defendant knowingly and willfully made a false statement about being a resident for one year in the district and defendant's eligibility to hold office in connection with qualifying as a candidate. State v. Kindberg, 211 Ga. App. 117, 438 S.E.2d 116, 1993 Ga. App. LEXIS 1436 (1993), cert. denied, No. S94C0379, 1994 Ga. LEXIS 253 (Ga. Jan. 28, 1994).

Persons not previously qualified may not run in rerun of contested primary. — The ordering of a rerun of a primary, after a contest in a race is sustained, is no reason for permitting other persons who were not properly qualified to run in the contested primary to qualify and compete in the rerun. Ingram v. Lott, 238 Ga. 513, 233 S.E.2d 770, 1977 Ga. LEXIS 1080 (1977).

Sufficiency of evidence for making false statements in filing for candidacy for political office. — In a case in which defendant appealed a conviction for false swearing, in violation of O.C.G.A. § 16-10-71(a), challenging the sufficiency of the evidence, the state failed to prove that defendant had the requisite criminal intent to support the conviction when defendant signed a declarations of candidacy for county commissioner as set forth in O.C.G.A. §§ 21-2-132 and 21-2-153. Pursuant to O.C.G.A. § 17-7-95(c), a judgment imposing a sentence following a plea of nolo contendere was considered a conviction for some purposes; however, such a conviction did not disqualify defendant from holding public office or otherwise deprive defendant of any civil or political rights, and there was no evidence that defendant intended to deceive the election board or the voters, as defendant believed that the 1986 nolo contendere conviction to a charge of aggravated assault was generally known in the county. Spillers v. State, 299 Ga. App. 854, 683 S.E.2d 903, 2009 Ga. App. LEXIS 1009 (2009).

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Candidate for party primary need not qualify in person. — Absent a requirement to the contrary in the procedural rules of the candidate's party, a candidate for a party nomination in a primary is not required to qualify in person. 1976 Op. Att'y Gen. No. U76-23.

Authority to refuse to qualify candidate. — The state and county executive committees of a political party have the authority to refuse to qualify a candidate upon a determination that such candidate does not meet the qualifications for nomination to a public office. 1976 Op. Att'y Gen. No. 76-90.

Withdrawal from primary after qualifying deadline. — If a qualified candidate withdraws from a primary to accept another appointment after the qualifying deadline, but before the primary is held, the party may not re-open qualifications for candidates in such primary. 1970 Op. Att'y Gen. No. U70-140.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, §§ 232, 253, 255.

C.J.S.

29 C.J.S., Elections, §§ 208 et seq., 234, 235.

ALR.

Extent of power of political party, committee, or officer to exclude persons from participating in its primaries as voters or candidates, 70 A.L.R. 1501; 88 A.L.R. 473; 97 A.L.R. 685; 151 A.L.R. 1121.

Constitutionality, construction, and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office, 153 A.L.R. 641.

21-2-153.1. Qualification of candidates for party nomination in a municipal primary; unopposed candidates; filing of affidavit with political party; posting of list of all qualified candidates.

(a) Unless otherwise provided by law, all candidates for party nomination in a municipal primary shall qualify as such candidates in accordance with the rules of their party. In the case of a general municipal primary, the candidates, or their agents, shall qualify at least 15 but not more than 45 days prior to the date of such primary, and such qualifying period shall be open for a minimum of two and one-half days. In the case of a special municipal primary, the candidates, or their agents, shall qualify at least ten but not more than 30 days prior to the date of such primary, and such qualifying period shall be open for a minimum of two and one-half days. The executive committee or other rule-making body of the party shall fix the qualifying date within the limitations provided in this Code section.

(b) After the expiration of the applicable qualification deadline prescribed in subsection (a) of this Code section, each candidate for nomination to a municipal office, having no opposing candidates within his or her own political party, shall automatically become the nominee of his or her party for such office if the applicable city charter or ordinance does not provide to the contrary. The name of such an unopposed candidate and the title of the nomination he or she is seeking shall not be placed upon the primary ballots or ballot labels. The proper officials of his or her political party shall certify the candidate as the party nominee for the office involved for the purpose of having his or her name placed upon the election ballots or ballot labels. In applying Code Sections 21-2-131 through 21-2-134, such an unopposed municipal candidate shall be deemed to have been nominated in a primary held by his or her political party.

(c) No person shall qualify with any political party as a candidate for nomination to any municipal office when such person has qualified for the same primary with another political party as a candidate for nomination by that party for any municipal office; nor shall a municipal or other appropriate executive committee of a political party certify any person as the candidate of said party when such person has previously qualified as a candidate for nomination for any public office for the same primary with another political party.

(d) Each candidate for party nomination described in subsection (a) of this Code section shall file an affidavit with the political party at the time of his or her qualifying stating:

(1) His or her full name and the name as the candidate desires it to be listed on the ballot. The surname of the candidate shall be the surname of the candidate as it appears on the candidate's voter registration card. After such name is submitted by the candidate to the political party, the form of such name shall not be changed during the primary and election for which such affidavit is submitted;

(2) His or her residence, with street and number, if any, and his or her post office address;

(3) His or her profession, business, or occupation, if any;

(4) The name of his or her precinct;

(5) That he or she is an elector of the municipality of his or her residence and is eligible to vote in the primary election in which he or she is a candidate for nomination;

(6) The name of the office he or she is seeking;

(7) That he or she is eligible to hold such office;

(8) That he or she has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude under the laws of this state or any other state or of the United States, or that his or her civil rights have been restored; and

(9) That he or she will not knowingly violate this chapter or any rules and regulations adopted under this chapter.

(e) Within two hours after the qualifications have ceased, the municipal executive committee of each political party shall post a list of all candidates who have qualified with such committee at city hall.

History.

Code 1981, § 21-2-153.1, enacted by Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 10; Ga. L. 2005, p. 253, § 21/HB 244.

Cross references.

Persons ineligible to hold public office, Ga. Const. 1983, Art. II, Sec. II, Para. III.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-906 are included in the annotations for this Code section.

If all candidates are unopposed, opening of polls unnecessary. — It is not necessary to open the polls when candidates have all been automatically nominated prior to any primary pursuant to the provisions of subsection (b) of former Code 1933, § 34A-906. 1968 Op. Att'y Gen. No. 68-321 (decided under former Code 1933, § 34A-906).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 236, 250 et seq.

C.J.S.
29 C.J.S., Elections, § 205 et seq.

21-2-154. Certification of political party candidates.

(a) At or before 12:00 Noon on the third day after the deadline for qualifying, the county executive committee of each political party shall certify to the superintendent and the state executive committee of each political party shall certify to the Secretary of State, on forms prescribed by the Secretary of State, all those candidates who have qualified with such committee for the succeeding primary election. Such certification shall be accompanied by the appropriate amount of the qualifying fees paid by such candidates as prescribed in paragraph (1) or (2) of subsection (c) of Code Section 21-2-131 and a copy of the declaration of candidacy and affidavit of each such candidate. Such certification shall not be accepted if the political party has not registered with the Secretary of State as required in Article 3 of this chapter. When the election superintendent qualifies candidates on behalf of a political party pursuant to subsection (c) of Code Section 21-2-153, the election superintendent shall certify at or before 12:00 Noon on the third day after the deadline for qualifying, on forms provided by the Secretary of State, all those candidates of such political party who qualified with the election superintendent.

(b) Any candidate whose name does not appear on the list of candidates posted by a county executive committee or the state executive committee pursuant to subsection (d) of Code Section 21-2-153 shall not be certified under this Code section; provided, however, that the name of a candidate who has properly qualified whose name has been left off of the list of candidates through inadvertence or clerical error may be placed upon such list upon the filing of an affidavit by the county executive committee or the state executive committee, as appropriate, attesting to such inadvertence or error. The county executive committee of each political party shall attach to its certification a copy of the affidavits required by paragraph (2) of subsection (b) of Code Section 15-6-50, paragraph (2) of subsection (a) of Code Section 15-9-2, subparagraph (c)(2)(A) of Code Section 15-16-1, paragraph (2) of subsection (b) of Code Section 45-16-1, and paragraph (2) of subsection (b) of Code Section 48-5-210.

History.
Code 1933, § 34-1006, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1985, p. 496, § 6; Ga. L. 1989, p. 643, § 6; Ga. L. 1989, p. 903, § 2; Ga. L. 1989, p. 1091, § 5; Ga. L. 1990, p. 243, § 3; Ga. L. 1994, p. 96, § 1; Ga. L. 1997, p. 590, § 13; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 11.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 239 et seq.

21-2-155. Reopening of qualification for office in event of candidate's death or withdrawal of incumbent who qualified as candidate prior to political party primary.

In the event of the death of a candidate or the withdrawal of an incumbent who qualified as a candidate to succeed himself or herself in office, either of which occurs after the close of qualifying for candidates for such office but prior to the date of a political party primary, the state executive committee or other committee of the party authorized by party rule or, in the case of a municipal election, the municipal executive committee may reopen qualification for the office sought by the deceased or withdrawn candidate for a period of not less than one nor more than three days.

History.
Code 1933, § 34-1007, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1983, p. 1190, § 10; Ga. L. 1985, p. 1430, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 13; Ga. L. 2012, p. 995, § 11/SB 92.
Editor's notes.
Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.
Law reviews.
For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

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Qualifications not reopened after withdrawal of candidate. — If a qualified candidate withdraws from a primary to accept another appointment after the qualifying deadline, but before the primary is held, the party may not reopen qualifications for candidates in such primary. 1970 Op. Att'y Gen. No. U70-140.

Reopening where other candidates remain in contention. — Upon the death of a candidate prior to the date of a political primary, the state executive committee or other authorized committee of a party may reopen qualification for a period of not less than one nor more than three days, even though there may be other candidates remaining in contention for the office. 1990 Op. Att'y Gen. No. U90-13.

21-2-156. Payment of primary expenses.

(a) The expenses of a primary shall be paid by the respective county, except that the expenses of municipal primaries shall be governed by subsections (b) and (c) of this Code section, and forms listed under paragraph (5) of Code Section 21-2-50 shall be furnished upon request by the Secretary of State.

(b) The expenses of a municipal primary shall be borne by the political party holding such primary except as provided in this subsec-

tion and subsection (c) of this Code section, and except that the expenses of providing polling places on public premises and electors lists shall be paid by the respective municipalities.

(c) The governing authority of each municipality may in its discretion authorize the payment by the municipality of any or all primary expenses other than those required by subsection (b) of this Code section to be paid by the municipality. This authorization of payment by the municipality of other primary expenses shall extend only to the expenses of primaries conducted by political parties which meet the definition of a "political party" contained in paragraph (25) of Code Section 21-2-2. Such additional expenditures as a municipal governing authority elects to make under this subsection are declared to be for a public purpose.

History.
Code 1933, § 34-1009, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 13; Ga. L. 1998, p. 295, § 1.

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Rejection of exorbitant bill for election expenses. — A county governing authority may reject a bill for expenses submitted by a probate judge for the conduct of an election in the event the county governing authority determines such bill to be exorbitant; however, the county governing authority must pay the expenses of a special primary even though the need for the special primary arose solely as a result of an error on the part of the probate judge. 1978 Op. Att'y Gen. No. U78-44.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 159.

21-2-157. Municipal nonpartisan primary; qualifying as a candidate; payment of expenses.

(a) The governing authority of any municipality may call and hold a nonpartisan primary for the purpose of nominating candidates to seek municipal office in a subsequent election. If held, such a nonpartisan primary shall be held at least 50 but not more than 60 days prior to the date of the election for which nominations are to be made; and the call for such primary shall be publicly issued at least 60 days prior to the date of holding the primary. To the extent practicable, the provisions of this chapter which apply to the preparation for and conduct of primaries of political parties shall also apply to the preparation for and conduct of municipal nonpartisan primaries.

(b) Each candidate for nomination to an office in a nonpartisan primary shall qualify as such candidate by personally, or by his or her duly authorized agent, filing notice of his or her candidacy in the office

of the superintendent of his or her municipality at least 45 days prior to the date of the primary, in accordance with the provisions of the charter and ordinances of the municipality not inconsistent with the requirements of this chapter.

(c) The expenses of a municipal nonpartisan primary may be paid by the municipality calling and holding such primary; provided, however, that the expenses of providing polling places on public premises and electors lists shall be paid by the municipality.

History.
Code 1981, § 21-2-157, enacted by Ga. L. 1998, p. 295, § 1.
Administrative rules and regulations.
Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, § 183-1-8-.01.

21-2-158. Unopposed candidate failing to receive a single vote.

In any general primary where an unopposed candidate is seeking party nomination for a public office, where such candidate's name appears on the primary ballot but such candidate fails to receive a single vote, such candidate shall not be nominated for such public office and such party shall not have a candidate for that public office on the ballot in the ensuing general election.

History.
Code 1981, § 21-2-158, enacted by Ga. L. 2001, Ex. Sess., p. 325, § 4.

Part 3

Nomination and Qualification of Independent Candidates, Candidates of Political Bodies, and Presidential Electors

21-2-170. Nomination of candidates by petition; form of petition; signatures; limitations as to circulation and amendment of petitions; listing of such candidates on ballots; charter or ordinance authorization.

(a) In addition to the party nominations made at primaries, nominations of candidates for public office other than municipal office may be made by nomination petitions signed by electors and filed in the manner provided in this Code section, and such nomination by petition may also be made for municipal public office if provided for by the municipality's charter or by municipal ordinance. Such petition shall be in the form prescribed by the officers with whom they are filed, and no forms other than the ones so prescribed shall be used for such purposes, but such petitions shall provide sufficient space for the printing of the elector's name as well as for his or her signature. In addition to the

other requirements provided for in this Code section, each elector signing a nomination petition shall also print his or her name thereon.

(b) A nomination petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. A nomination petition of a candidate for any other office shall be signed by a number of voters equal to 5 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. However, in the case of a candidate seeking an office for which there has never been an election or seeking an office in a newly constituted constituency, the percentage figure shall be computed on the total number of registered voters in the constituency who would have been qualified to vote for such office had the election been held at the last general election and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected.

(c) Each person signing a nomination petition shall declare therein that he or she is a duly qualified and registered elector of the state, county, or municipality entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number, if any, and be urged to add the person's date of birth which shall be used for verification purposes. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate, except any political body seeking to have the names of its candidates for the offices of presidential electors placed upon the ballot through nomination petitions shall not compile a separate petition for each candidate for such office, but such political body shall compile its petitions so that the entire slate of candidates of such body for such office shall be listed together on the same petition. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation.

(d) A nomination petition shall be on one or more sheets of uniform size and different sheets must be used by signers resident in different counties or municipalities. The upper portion of each sheet, prior to being signed by any petitioner, shall bear the name and title of the officer with whom the petition will be filed, the name of the candidate to

be supported by the petition, his or her profession, business, or occupation, if any, his or her place of residence with street and number, if any, the name of the office he or she is seeking, his or her political body affiliation, if any, and the name and date of the election in which the candidate is seeking election. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination petition, and each sheet shall be numbered consecutively, beginning with number one, at the foot of each page. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, which affidavit must be subscribed and sworn to by such circulator before a notary public and shall set forth:

(1) His or her residence address, giving municipality with street and number, if any;

(2) That each signer manually signed his or her own name with full knowledge of the contents of the nomination petition;

(3) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and

(4) That, to the best of the affiant's knowledge and belief, the signers are registered electors of the state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county or municipality named in the affidavit.

No notary public may sign the petition as an elector or serve as a circulator of any petition which he or she notarized. Any and all sheets of a petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected.

(e) No nomination petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same.

(f) A nomination petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

(g) Only those candidates whose petitions are accompanied by a certificate sworn to by the chairperson and secretary of a political body duly registered with the Secretary of State as required by Code Section 21-2-110, stating that the named candidate is the nominee of that political body by virtue of being nominated in a convention, as prescribed in Code Section 21-2-172, shall be listed on the ballot under the name of the political body. All petition candidates not so designated as the nominee of a political body shall be listed on the ballot in the independent column.

(h) Notwithstanding the provisions of this Code section, candidates for municipal offices may be nominated by petitions as provided for in this Code section only if the municipality authorizes such nominations by petitions in its charter or by ordinance.

History.

Ga. L. 1922, p. 97, § 3; Code 1933, § 34-1904; Ga. L. 1943, p. 292, § 1; Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1010, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 257, § 1; Ga. L. 1968, p. 871, § 7; Ga. L. 1970, p. 347, § 13; Ga. L. 1974, p. 4, § 3; Ga. L. 1975, p. 861, § 1; Ga. L. 1979, p. 616, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 890, § 3; Ga. L. 1987, p. 34, § 1; Ga. L. 1990, p. 243, § 4; Ga. L. 1991, p. 133, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 23, § 2; Ga. L. 2001, p. 240, § 12.

JUDICIAL DECISIONS

Percentage requirement not unconstitutional. — As a matter of law, Georgia's requirement of five percent of the signatures of eligible voters on nominating petitions is neither unreasonable nor does it constitute invidious, intentional, or purposeful discrimination. Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1970 U.S. Dist. LEXIS 11250 (N.D. Ga. 1970), aff'd, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Georgia's five percent petition requirement does not violate the United States Constitution. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Georgia's requirement under O.C.G.A. § 21-2-170(b) that a candidate for federal office could appear on an election ballot if the candidate obtained signatures in a nominating petition from at least five percent of the registered voters was not a substantive qualification, but a permissible procedural regulation of the manner in which candidates could obtain ballot placement; therefore, the requirement did not violate the Qualifications Clause of the United States Constitution. Cartwright v. Barnes, 304 F.3d 1138, 2002 U.S. App. LEXIS 18488 (11th Cir. 2002), cert. denied, 538 U.S. 908, 123 S. Ct. 1500, 155 L. Ed. 2d 229, 2003 U.S. LEXIS 2018 (2003).

Percentage requirement unconstitutional. — Summary judgment was granted to a minor political party, its candidates, and its registered voters on a claim that Georgia's ballot access requirements for congressional races, including a five percent petition signature requirement, violated their First and Fourteenth Amendment rights where the evidence showed that even reasonably diligent political-body candidates who had expended considerable time and resources failed to access Georgia's ballots; thus Georgia's laws relating to congressional races had functionally frozen the status quo, and although the state had a legitimate interest in ensuring a significant modicum of support to screen out frivolous candidates and avoid ballot confusion, the State offered no justification for the higher petition signature requirement for non-statewide office candidates. Cowen v. Raffensperger, 537 F. Supp. 3d 1327, 2021 U.S. Dist. LEXIS 181544 (N.D. Ga. 2021), rev'd in part, aff'd, 22 F.4th 1227, 2022 U.S. App. LEXIS 390 (11th Cir. 2022).

Preclearance of 1986 amendments. — Plaintiff political body claimed that expecting it to begin a signature drive with the possibility that the 1986 amendments to this title might not be precleared and therefore the possibility that it would have to obtain 2.5 percent of the eligible voters' signatures instead of 1 percent "demands politically absurd behavior by movants," and was unconstitutionally burdensome was meritless since the convention requirement and the notice of candidacy requirement were not in doubt. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986) (see also notes to §§ 21-2-130, 21-2-132, and 21-2-187).

Georgia imposes no suffocating restrictions whatever upon the free circu-

lation of nominating petitions. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Rights of independent candidates and small or newly formed political organizations generally. — So far as the election laws of this state are concerned, independent candidates and members of small or newly formed political organizations are wholly free to associate, to proselytize, to speak, to write, and to organize campaigns for any school of thought they wish. They may confine themselves to an appeal for write-in votes. Or they may seek, over a six-month period, the signatures of five percent of the eligible electorate for the office in question. If they choose the latter course, the way is open for this state imposes no suffocating restrictions whatever upon the free circulation of nominating petitions. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

For comparison of procedures followed by political parties and political bodies, see McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Signing more than one petition. — A voter may sign a petition even though the voter has signed others. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971).

Signer need not state intention to vote for that candidate. — Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971); McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Signers may participate in primaries. — A person who has previously voted in a party primary is fully eligible to sign a petition. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971); McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

A voter who has signed the petition of a nonparty candidate is free thereafter to participate in a party primary. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971); McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Persons not registered at time of previous election may sign. — A person who was not even registered at the time of the previous election is fully eligible to sign the nominating petition. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971); McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

No signature on a nominating petition need be notarized. Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, 1971 U.S. LEXIS 24 (1971); McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Circulator and signer of petition may not notarize affidavits. — A notary who circulated part of a nominating petition and also signed the petition was disqualified from notarizing circulators' affidavits on the petition and it was proper to disqualify those pages with affidavits notarized by such person. Poppell v. Lanier, 264 Ga. 473, 448 S.E.2d 194, 1994 Ga. LEXIS 778 (1994).

Lack of notarization. — County board of election (BOE) members were entitled to qualified immunity in their individual capacities against a candidate's 42 U.S.C. § 1983 claims for the BOE's challenge to the candidate's nomination petition because a reasonable official would not have believed that compliance with the requirements of O.C.G.A. § 21-2-171 in response to the facial deficiency of the candidate's petition constituted an unlawful action in violation of the candidate's rights; the petition did not comply with O.C.G.A. § 21-2-170 because it lacked the necessary notarization, rendering it facially defective, and given this

defect, § 21-2-171 required the BOE to disregard the non-conforming pages of the petition and authorized it to hold a hearing in connection therewith. Johnson v. Randolph County, 301 Ga. App. 265, 687 S.E.2d 223, 2009 Ga. App. LEXIS 1363 (2009).

Lawsuit seeking name placed on ballot properly dismissed. — Trial court properly dismissed a nominee's lawsuit seeking to have the nominee's name placed upon the ballot for the 2016 general election as an independent candidate for President of the United States because the notices of candidacy were submitted 11 days after the deadline set forth in O.C.G.A. § 21-2-132(d)(1) and the nominee failed to have enough signatures verified, thus, the nominee was not entitled to have the nominee's name placed on the ballot. De La Fuente v. Kemp, 300 Ga. 79, 793 S.E.2d 89, 2016 Ga. LEXIS 712 (2016).

Write-in votes. — The procedures provided for in O.C.G.A. §§ 21-2-132(c) and (d) (see now subsections (d) and (e)), 21-2-170(b) and (g), 21-2-171(a), 21-2-172, and 21-2-322(7) relate only to the right to have the name of a candidate or the nominee of a political body printed on the ballot. There is no limitation whatever, procedural or substantive, on the right of a voter to write in on the ballot the name of the candidate of the voter's choice and to have that write-in vote counted. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34A-910 are included in the annotations for this Code section.

Purpose of this section is to prevent persons with little or no following encumbering the official ballot. 1948-49 Ga. Op. Att'y Gen. 157.

Nominating petition is necessary only if the municipality's charter or ordinance so requires it, and it must be in the form prescribed by the law. 1971 Op. Att'y Gen. No. 71-185 (decided under former Code 1933, § 34A-910).

Signature must be same as on voter registration list. — It is essential to the validity of a signature that it appear on the petition in a manner identical to that in which it appears on the voter registration list. 1962 Ga. Op. Att'y Gen. 205 (decided under former Code 1933, § 34A-910).

Invalid signature does not invalidate entire petition. — The overwhelming weight of authority seems to be that the invalidity of one or more signatures on a petition does not invalidate all others not subject to such infirmity. Similarly, fraudulent signatures do not invalidate the entire petition where there is no charge that the candidate personally was in any way implicated in such fraud. 1962 Ga. Op. Att'y Gen. 205 (decided under former Code 1933, § 34A-910).

"Last election." — The language, "in the last election for the filling of the office the candidate is seeking," contained in O.C.G.A. § 21-2-170(b), refers to the last election for the particular office sought by the candidate. 1990 Op. Att'y Gen. No. 90-6.

Petition form may not be validly altered. — The form prescribed by the Secretary of State for the nominating petition of a candidate seeking to have the candidate's name placed on the general election ballot cannot be altered by the candidate, and if altered sheets are included in the petition, the altered sheets would be eliminated as invalid without affecting the validity of the petition, provided the petition was otherwise valid. 1976 Op. Att'y Gen. No. U76-22.

Valid signatures within 180 days of filing to be counted. — All signatures, otherwise proper, on a nomination petition signed thereon within 180 days of the last day for filing the petition, should be counted. 1965-66 Op. Att'y Gen. No. 66-204 (decided under former Code 1933, § 34A-910).

Deletion of names where petition contains names of electors from more

than one county. — Where a given sheet contained the names of eight Bibb County electors and two Jones County electors, it was permissible for the party to delete the names of the Jones County electors. Although former Code 1933, § 34-1011 (see now O.C.G.A. § 21-2-171(a)) provided that a petition must not contain "material alterations" without the consent of the signers, a deletion of a name would not violate that section, as it was obviously intended to prevent changes in names or addresses to keep improper signatures on a petition. 1965-66 Op. Att'y Gen. No. 66-56 (decided under former Code 1933, § 34A-910).

Number of signatures needed when election district altered. — The General Assembly intends that when an election district has been newly created, or its boundaries changed, the number of signatures needed would be based on the number of electors in the new or altered district who were registered to vote in the last election. 1968 Op. Att'y Gen. No. 68-231 (decided under former Code 1933, § 34A-910).

Presidential electors for independent candidate. — An independent candidate for President of the United States may have the names of the candidate's presidential electors placed on the general election ballot by the petition method; and the entire slate of presidential elector candidates for such individual shall be listed together on the same petition. 1979 Op. Att'y Gen. No. 79-38.

Each sheet of a nomination petition should be numbered consecutively, beginning with number one, at the foot of each page; regardless of any control numbers which are used in the obtaining of signatures, the pages should be renumbered when submitted to the Secretary of State. 1965-66 Op. Att'y Gen. No. 66-56 (decided under former Code 1933, § 34A-910).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 239 et seq.

C.J.S.

29 C.J.S., Elections, § 193 et seq.

ALR.

Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition, 100 A.L.R. 1308.

Constitutionality of election laws as regards nominations by petition or otherwise than by statutory convention or primary election, 146 A.L.R. 668.

Construction and application of Elections Clause of United States Constitution, U.S. Const. Art. I, § 4, cl.1, and state constitutional provisions concerning congressional elections, 34 A.L.R.6th 643.

Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions, 40 A.L.R.6th 317.

21-2-171. Examination of petitions; basis for grant or denial of filing; review and appeal of denial.

(a) When any nomination petition is presented in the office of the Secretary of State or of any superintendent for filing within the period limited by this chapter, it shall be the duty of such officer to examine the same to the extent necessary to determine if it complies with the law. No candidate shall be qualified if such nomination petition:

(1) Contains material errors or defects apparent on the face thereof;

(2) Contains material alterations made after signing without the consent of the signers; or

(3) Does not contain a sufficient number of signatures of registered voters as required by law.

The Secretary of State or any superintendent shall review the petition for compliance with the provisions of Code Section 21-2-170 and shall disregard any pages or signatures that are not in conformance with the provisions of that Code section. The Secretary of State or any superintendent may question the genuineness of any signature appearing on a petition or the qualification of any signer whose signature appears thereon and, if he or she shall thereupon find that any such signature is improper, such signature shall be disregarded in determining whether the petition contains a sufficient number of signatures as required by law. The invalidity of any sheet of a nomination petition shall not affect the validity of such petition if a sufficient petition remains after eliminating such invalid sheet.

(b) Upon the filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to determine if it complies with the law. During such examination the officer shall have the right to summon by subpoena on two days' notice and interrogate under oath the candidate named in the petition, any person who signed the petition, any person who executed or witnessed any affidavit or certificate accompanying the petition, or any other person who may have knowledge of any matter relevant to the examination. Such officer shall also have the right to subpoena on two days' notice any record relevant to the examination. No witness shall be compelled to attend if he or she should reside more than 100 miles from the place of hearing by the nearest practical route; provided, however, that the officer may compel the taking of his or her testimony by deposition in the county of the residence of the witness. The sheriff of any county, or his or her deputy, or agent of the officer shall serve all processes issued by the officer, or the same may be served by United States registered or certified mail or statutory overnight delivery; and the production of an appropriate return receipt issued by the United States post office or commercial delivery firm shall constitute prima-facie evidence of such service. In case of the refusal of any person subpoenaed to attend or testify, such fact shall be reported forthwith by the officer to the appropriate superior court, or to a judge thereof, and such court or judge shall order such witness to attend and testify; and, on failure or refusal to obey such order, such witness shall be dealt with as for contempt. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as now allowed and paid witnesses in civil actions in the superior court. The officer shall not be bound by technical rules of evidence in hearing such testimony. The

testimony presented shall be stenographically recorded and made a part of the record of the examination. If the petition complies with the law, it shall be granted and the candidate named therein shall be notified in writing. If the petition fails to comply with the law, it shall be denied and the candidate named therein shall be notified of the cause for such denial by letter directed to his or her last known address. In neither case shall the petition be returned to the candidate.

(c) The decision of the officer denying a nomination petition may be reviewed by the superior court of the county containing the office of such officer upon an application for a writ of mandamus to compel the granting of such petition. The application for such writ of mandamus shall be made within five days of the time when the petitioner is notified of such decision. Upon the application being made, a judge of such court shall fix a time and place for hearing the matter in dispute as soon as practicable; and notice thereof shall be served with a copy of such application upon the officer with whom the nomination petition was filed and upon the petitioner. At the time so fixed the court, or any judge thereof assigned for the purpose, shall hear the case. If after such hearing the said court shall find that the decision of the officer was erroneous, it shall issue its mandate to the officer to correct his or her decision and to grant the nomination petition. From any decision of the superior court an appeal may be taken within five days after the entry thereof. It shall be the duty of the appellate court to fix the hearing and to announce its decision within such period of time as will permit the name of the candidate affected by the court's decision to be printed on the ballot if the court should so determine.

History.

Code 1933, § 34-1011, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 13; Ga. L. 1997, p. 590, § 14; Ga. L. 1998, p. 295, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 20, § 1; Ga. L. 2010, p. 914, § 6/HB 540; Ga. L. 2016, p. 883, § 3-6/HB 927.

Cross references.

Witness fees and mileage, § 24-13-25.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, made the Act applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34A-904 are included in the annotations for this

Code section.

Prohibiting candidates' names from ballot because they cannot post money. — To prohibit candidates from getting their names on the ballot solely because they cannot post a certain amount of money is illegal and unconstitutional. Where the candidate can get the candidate's name on the ballot in some other fashion, either by a nominating petition, primary election, or pauper's affidavit, such unconstitutionality does not attach. Jenness v. Little, 306 F. Supp. 925, 1969 U.S. Dist. LEXIS 12641 (N.D. Ga. 1969) (decided under former Code 1933, § 34A-904).

Lack of notarization. — County board of election (BOE) members were entitled to qualified immunity in their individual capacities against a candidate's 42 U.S.C. § 1983 claims for the BOE's challenge to the candidate's nomination petition because a reasonable official would not have believed that compliance with the requirements of O.C.G.A. § 21-2-171 in response to the facial deficiency of the candidate's petition constituted an unlawful action in violation of the candidate's rights; the petition did not comply with O.C.G.A. § 21-2-170 because it lacked the necessary notarization, rendering it facially defective, and given this defect, § 21-2-171 required the BOE to disregard the non-conforming pages of the petition and authorized it to hold a hearing in connection therewith. Johnson v. Randolph County, 301 Ga. App. 265, 687 S.E.2d 223, 2009 Ga. App. LEXIS 1363 (2009).

Lawsuit seeking name placed on ballot properly dismissed. — Trial court properly dismissed a nominee's lawsuit seeking to have the nominee's name placed upon the ballot for the 2016 general election as an independent candidate for President of the United States because the notices of candidacy were submitted 11 days after the deadline set forth in O.C.G.A. § 21-2-132(d)(1) and the nominee failed to have enough signatures verified, thus, the nominee was not entitled to have the nominee's name placed on the ballot. De La Fuente v. Kemp, 300 Ga. 79, 793 S.E.2d 89, 2016 Ga. LEXIS 712 (2016).

For comparison of procedures followed by political parties and political bodies, see McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Write-in votes. — The procedures provided for in O.C.G.A. §§ 21-2-132(c) and (d) (see now (d) and (e)), 21-2-170(b) and (g), 21-2-171(a), 21-2-172, and 21-2-322(7) relate only to the right to have the name of a candidate or the nominee of a political body printed on the ballot. There is no limitation whatever, procedural or substantive, on the right of a voter to write in on the ballot the name of the candidate of the voter's choice and to have that write-in vote counted. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Appeal of denial of nomination petition was moot. — Regardless of the merits or lack thereof of the candidate's claims that the candidate's nomination petition was miscounted, improperly counted, or that there were irregularities in the process leading to the unlawful decision to keep the candidate off the November ballot, the candidate's present appeal was moot because the general election had already taken place. Bodkin v. Bolia, 285 Ga. 758, 684 S.E.2d 241, 2009 Ga. LEXIS 483 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-904 and former Code Section 21-3-90 are included in the annotations for this Code section.

Employment of assistants in checking petitions. — For duties which require no discretion or judgment, the Secretary of State or judges of a probate court may legally employ certified public ac-

countants or other persons on a temporary basis to assist in checking nomination petitions. 1965-66 Op. Att'y Gen. No. 66-159 (decided under former Code 1933, § 34A-904).

Deletion of names from petition with names of two counties' electors not "material alteration". — Where a given sheet contained the names of eight Bibb County electors and two Jones County electors, it was permissible for the party to delete the names of the Jones County electors. Although a petition must not contain "material alterations" without the consent of the signers, a deletion of a name would not violate those provisions, as it was obviously intended to prevent changes in names or addresses to keep improper signatures on a petition. 1965-66 Op. Att'y Gen. No. 66-56 (decided under former Code 1933, § 34A-904).

Proper signatures within 180 days of filing to be counted. — All signatures, otherwise proper, on a nomination petition signed thereon within 180 days of the last day for filing the petition, should be counted. 1965-66 Op. Att'y Gen. No. 66-204 (decided under former Code 1933, § 34A-904).

Qualification fees. — Former Code 1933, § 34A-904 authorized the city's governing authority to charge qualification fees to those running for office in a general city election. 1969 Op. Att'y Gen. No. 69-330 (decided under former Code 1933, § 34A-904).

Altered sheets eliminated without affecting validity of remainder of petition. — The form prescribed by the Secretary of State for the nominating petition of a candidate seeking to have the candidate's name placed on the general election ballot cannot be altered by the candidate, and if altered sheets are included in the petition, the altered sheets would be eliminated as invalid without affecting the validity of the petition, provided the petition were otherwise valid. 1976 Op. Att'y Gen. No. U76-22.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 239 et seq.

C.J.S.

29 C.J.S., Elections, § 193 et seq.

ALR.

Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition, 100 A.L.R. 1308.

Challenges to write-in ballots and certification of write-in candidates, 75 A.L.R.6th 311.

21-2-172. Nomination of presidential electors and candidates of political bodies by convention.

(a) Any political party desiring to nominate its presidential electors by convention, any political body desiring to nominate its candidates qualifying with petitions by convention, and any political body desiring to nominate its candidates for state-wide public office by convention by virtue of qualifying under Code Section 21-2-180 shall, through its state executive committee, adopt rules and regulations in conformity with this Code section governing the holding of such conventions for the nomination of candidates for any state, district, or county office. Such rules and regulations shall be filed with the Secretary of State, and no amendment to such rules and regulations shall be effective unless filed with the Secretary of State at least 30 days prior to the date of such convention. The state party or body chairperson of such political party or body and its secretary shall accompany the filing of such rules and regulations with their certificate certifying that the rules and regula-

tions therein filed are a true and correct copy of the rules and regulations of the party pertaining to the nomination of candidates by the convention method.

(b) The Secretary of State shall examine all such rules and all amendments thereto as shall be filed with him or her within 15 days after receipt thereof. If, in the opinion of the Secretary of State, any rule or regulation, or any part thereof, does not meet the requirements prescribed by this Code section, he or she shall notify the state party or body chairperson and secretary of such party or body in writing, stating therein his or her reasons for rejecting such rule or regulation. If, in the judgment of the Secretary of State, such rules and regulations meet the requirements prescribed by this Code section, they shall be approved.

(c) The Secretary of State shall not approve any such rules or regulations unless they provide:

(1) That a notice of the proposed date for the holding of any such convention must be published in a newspaper having a general circulation within the area to be affected at least ten days prior to the date of any such convention. Such notice shall also state the purpose for which the convention has been called;

(2) That delegates to the convention shall be certified pursuant to appropriate party or body rules by the proper party or body officials;

(3) That delegates to the convention shall be apportioned in such manner as will properly reflect the number of electors residing within the political subdivisions or areas affected in accordance with the last United States decennial census, or apportioned according to the number of votes received by the party's candidate for the office of President of the United States in the last presidential election in the areas concerned, or apportioned according to the number of votes received by the party's candidate for the office of Governor of Georgia in the last gubernatorial election in the areas concerned;

(4) In the event that more than one county is involved, each county shall have at least one delegate to the convention, and such additional delegates as shall be allotted thereto shall be apportioned according to paragraph (3) of this subsection; and

(5) That a certified copy of the minutes of the convention, attested to by the chairperson and secretary of the convention, must be filed by the nominee with his or her nomination petition.

(d) Any candidate nominated by convention shall be required to pay to the person with whom he or she files his or her notice of candidacy the same qualifying fee or the same pauper's affidavit and qualifying petition as that required of other candidates for the same office.

(e) A convention for the purpose of nominating candidates shall be

held at least 150 days prior to the date on which the general election is conducted.

(f) Nothing contained within this Code section shall be construed so as to apply to the nomination of substitute candidates by convention pursuant to Code Section 21-2-134 or to the nomination of candidates in special elections.

History.

Code 1933, § 34-1012, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1986, p. 890, § 4; Ga. L. 1987, p. 34, § 1; Ga. L. 1987, p. 647, § 3; Ga. L. 1989, p. 643, § 7; Ga. L. 1990, p. 53, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, Ex. Sess., p. 325, § 8; Ga. L. 2014, p. 1, § 4/HB 310; Ga. L. 2019, p. 7, § 4/HB 316.

Law reviews.

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

For comparison of procedures followed by political parties and political bodies, see McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Write-in votes. — The procedures provided for in O.C.G.A. §§ 21-2-132(c) and (d) (see now (d) and (e)), 21-2-170(b) and (g), 21-2-171(a), 21-2-172, and 21-2-322(7) relate only to the right to have the name of a candidate or the nominee of a political body printed on the ballot. There is no limitation whatever, procedural or substantive, on the right of a voter to write in on the ballot the name of the candidate of the voter's choice and to have that write-in vote counted. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-904 are included in the opinions under this Code section.

Convention requirements inapplicable to petitions. — The requirements as to conventions under former Code 1933, § 34-1012 (see now O.C.G.A. § 21-2-172) were not added to the requirements as to nomination petitions under former Code 1933, § 34-1004 (see now O.C.G.A. § 21-2-151). 1968 Op. Att'y Gen. No. 68-314.

Only primary-nominated candidates exempt from qualification fee. — The effect of former Code 1933, § 34-1004 (see now O.C.G.A. § 21-2-151) and former Code 1933, § 34-1012 (see now O.C.G.A. § 21-2-172) was to exempt only candidates nominated in a primary from paying the qualification fee. 1968 Op. Att'y Gen. No. 68-316.

Qualification fees. — Former Code 1933, § 34A-904 authorized the city's governing authority to charge qualification fees to those running for office in a general city election. 1969 Op. Att'y Gen. No. 69-330 (decided under former Code 1933, § 34A-904).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 222 et seq.
C.J.S.
29 C.J.S., Elections, § 184 et seq.
ALR.
Construction and application of statutes relating to filling vacancies in nominations for election to public office, 143 A.L.R. 996.

PART 4

NOMINATION OF CANDIDATES OF POLITICAL BODIES FOR STATE-WIDE PUBLIC OFFICE BY CONVENTION

21-2-180. Manner of qualification.

Any political body which is duly registered as provided for in Code Section 21-2-110 is qualified to nominate candidates for state-wide public office by convention if:

(1) The political body files with the Secretary of State a petition signed by voters equal in number to 1 percent of the registered voters who were registered and eligible to vote in the preceding general election; or

(2) At the preceding general election, the political body nominated a candidate for state-wide office and such candidate received a number of votes equal to 1 percent of the total number of registered voters who were registered and eligible to vote in such general election.

History.
Code 1981, § 21-2-180, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1998, p. 295, § 1.

21-2-181. Filing of petitions generally.

Petitions to qualify political bodies to nominate candidates for state-wide public office by convention shall be filed with the Secretary of State and shall be signed by voters in the manner provided in this part. Such petitions shall provide sufficient space for the printing of the voter's name and for the voter's signature. No forms other than those prescribed in this part shall be used for qualifying a political body to nominate candidates for public office.

History.
Code 1981, § 21-2-181, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1987, p. 34, § 1; Ga. L. 1998, p. 295, § 1.

21-2-182. Contents of petitions; signatures.

Each person signing a political body qualifying petition shall declare therein that such person is a duly qualified and registered voter of the

state, entitled to vote in the next election for members of the General Assembly, and shall provide with such person's signature such person's residence address and county and the date of such person's signature. No person shall sign the same petition more than once. Each petition shall support the qualification of only one political body. No signature shall be valid if made more than 15 months prior to the submission of the petitions to the Secretary of State. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petitions to the Secretary of State for filing, but such request shall be disregarded if made after such presentation.

History.
Code 1981, § 21-2-182, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions, 40 A.L.R.6th 317.

21-2-183. Form of petitions; affidavits of circulators.

(a) A petition to qualify a political body to nominate candidates for public office by convention shall be on one or more sheets of uniform size, and different sheets must be used by signers residing in different counties. The upper portion of each sheet, prior to being signed by any petitioner, shall bear the name and title of the Secretary of State and the political body to be formed by the petition. If more than one sheet is used, they shall be bound together when offered for filing and each sheet shall be numbered consecutively, beginning with number one, at the foot of each page.

(b) Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet setting forth:

(1) The residence address of the circulator;

(2) That each signer manually signed such signer's own name with full knowledge of the contents of the political body qualifying petitions;

(3) That, to the best of the affiant's knowledge and belief, the signers are registered voters of the State of Georgia, qualified to sign the petition;

(4) That their respective residences are correctly stated in the petition; and

(5) That they all reside in the county named in the affidavit.

History.
Code 1981, § 21-2-183, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1997, p. 590, § 15; Ga. L. 1998, p. 295, § 1.

21-2-184. Restriction on amendment or supplementation.

A petition to qualify a political body to nominate candidates for state-wide public office by convention shall not be amended or supplemented after its presentation to the Secretary of State for filing.

History.
Code 1981, § 21-2-184, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1998, p. 295, § 1.

21-2-185. Filing deadline.

No petition to qualify a political body shall be submitted to the Secretary of State for verification after 12:00 Noon on the second Tuesday in July.

History.
Code 1981, § 21-2-185, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1997, p. 590, § 16; Ga. L. 1998, p. 295, § 1.

21-2-186. Examination of petitions; judicial review.

Petitions to qualify a political body to nominate candidates for state-wide public office by convention shall be examined and shall be subject to judicial review in the same manner as provided for candidates nominated by petition pursuant to Code Section 21-2-171.

History.
Code 1981, § 21-2-186, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1998, p. 295, § 1.

21-2-187. Holding of conventions; filing notice of candidacy.

Political bodies shall hold their conventions in accordance with Code Section 21-2-172, and candidates nominated for state-wide public office in convention shall file a notice of candidacy no earlier than 9:00 A.M. on the fourth Monday in June immediately prior to the election and no later than 12:00 Noon on the Friday following the fourth Monday in June as prescribed in Code Section 21-2-132; provided, however, that the political body must file its qualifying petition no later than 12:00 Noon on the second Tuesday in July following the convention as prescribed in Code Section 21-2-172 in order to qualify its candidates to be listed on the general election ballot.

History.
Code 1981, § 21-2-187, enacted by Ga. L. 1986, p. 890, § 5; Ga. L. 1987, p. 1360, § 9; Ga. L. 1989, p. 643, § 8; Ga. L. 1997, p. 590, § 17; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, Ex. Sess., p. 325, § 9; Ga. L. 2014, p. 1, § 5/HB 310.

Law reviews.
For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

JUDICIAL DECISIONS

Effect of federal preclearance procedure. — Where plaintiff political party held no convention in 1986 to choose its nominees but claimed it was denied ballot access by the fact that it was notified of the resolution of the federal preclearance procedure one day after the deadline for filing notice of candidacy, the court found no merit in this argument since the notice of candidacy provision, enacted one year before the June 9, 1986 preclearance determination, was not altered by the 1986 amendments in O.C.G.A. T. 21 and thus was not subject to the preclearance determination. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

Where plaintiff political body contended federal preclearance of the 1986 amendments to O.C.G.A. T. 21 was "late," plaintiff should have complied with the unchallenged Election Code requirements of holding a convention and filing notice of candidacy. Libertarian Party of Georgia v. Harris, 644 F. Supp. 602, 1986 U.S. Dist. LEXIS 21463 (N.D. Ga. 1986).

ARTICLE 5

PRESIDENTIAL PREFERENCE PRIMARY

OPINIONS OF THE ATTORNEY GENERAL

Bond referendum may be held on the date of the presidential preference primary, but the bond referendum should be placed on a separate ballot so that voters need not request a party ballot to vote only in the referendum. 1975 Op. Att'y Gen. No. 75-132.

21-2-190. Short title.

This article shall be known and may be cited as the "Georgia Presidential Preference Primary Law."

History.
Code 1933, § 34-1001A, enacted by Ga. L. 1973, p. 221, § 1.

21-2-191. Parties entitled to hold primaries; dates; decision to elect delegates to presidential nominating convention in primary; qualifying periods for candidates for delegate.

As provided in this article, a presidential preference primary shall be held in 2012 and every four years thereafter for each political party or body which has cast for its candidates for President and Vice President in the last presidential election more than 20 percent of the total vote cast for President and Vice President in this state, so that the electors may express their preference for one person to be the candidate for nomination by such person's party or body for the office of President of the United States; provided, however, that no elector shall vote in the primary of more than one political party or body in the same presidential preference primary. Such primary shall be held in each year in which a presidential election is to be conducted on a date selected by the

Secretary of State which shall not be later than the second Tuesday in June in such year. The Secretary of State shall select such date no later than December 1 of the year immediately preceding such primary. A state political party or body may by rule choose to elect any portion of its delegates to that party's or body's presidential nominating convention in the primary; and, if a state political party or body chooses to elect any portion of its delegates, such state political party or body shall establish the qualifying period for those candidates for delegate and delegate alternate positions which are to be elected in the primary and for any party officials to be elected in the primary and shall also establish the date on which state and county party executive committees shall certify to the Secretary of State or the superintendent, as the case may be, the names of any such candidates who are to be elected in the primary; provided, however, that such dates shall not be later than 60 days preceding the date on which the presidential preference primary is to be held.

History.

Code 1933, § 34-1002A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1974, p. 429, § 1; Ga. L. 1975, p. 1223, § 1; Ga. L. 1986, p. 220, § 1; Ga. L. 1992, p. 1, §§ 1, 1A; Ga. L. 1994, p. 1406, § 6; Ga. L. 1997, p. 590, § 18; Ga. L. 2007, p. 544, § 2/SB 194; Ga. L. 2011, p. 630, § 1/HB 454.

Editor's notes.

This Code section was amended by §§ 1 and 1A of Ga. L. 1992, p. 1. Section 6 of that Act, however, provided that § 1 of that Act would become effective upon the preclearance of this Act by the United States Attorney General pursuant to § 5 of the federal Voting Rights Act of 1965, as amended. If the Act did not receive such preclearance on or before January 27, 1992, § 1 of the Act would be void and would stand repealed in its entirety as of that time and date and § 1A, which amended this Code section to read as it did prior to the amendment by § 1 of the Act, would become effective on January 28, 1992. If § 1 did receive such preclearance, then § 1A of the Act would not become effective but would be void and stand repealed in its entirety upon § 1 becoming effective. The Act received preclearance by the United States Attorney General on January 27, 1992.

JUDICIAL DECISIONS

Preservation of party autonomy. — The federal district court reads O.C.G.A. § 21-2-191 (only those parties which have cast greater than twenty percent of the votes in the last presidential election may participate in the presidential preference primary) and O.C.G.A. § 21-2-195 (parties are free to set out the rules by which delegates are bound) alongside O.C.G.A. § 21-2-193 (ballot decision-making) as a distinct attempt at preserving party autonomy in the nomination process. Duke v. Cleland, 783 F. Supp. 600, 1992 U.S. Dist. LEXIS 6771 (N.D. Ga.), aff'd, 954 F.2d 1526, 1992 U.S. App. LEXIS 1957 (11th Cir. 1992).

21-2-192. Proclamation by Governor; copies of proclamation transmitted to superintendents.

It shall be the duty of the Governor to issue his proclamation for such presidential preference primary, a copy of which shall be transmitted promptly by the Secretary of State to the superintendent of each county.

History.
Code 1933, § 34-1008A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1975, p. 1223, § 3; Ga. L. 1986, p. 220, § 2.

21-2-193. List of names of candidates to appear on ballot; publication of list.

On a date set by the Secretary of State, but not later than 60 days preceding the date on which a presidential preference primary is to be held, the state executive committee of each party which is to conduct a presidential preference primary shall submit to the Secretary of State a list of the names of the candidates of such party to appear on the presidential preference primary ballot. Such lists shall be published on the website of the Secretary of State during the fourth week immediately preceding the date on which the presidential preference primary is to be held.

History.
Code 1933, § 34-1003A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1980, p. 5, § 1; Ga. L. 1987, p. 1360, § 10; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 1406, § 7; Ga. L. 1997, p. 590, § 19; Ga. L. 2007, p. 544, § 3/SB 194; Ga. L. 2011, p. 630, § 2/HB 454.

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Constitutionality. — This section is neither unduly burdensome nor irrational, and is valid under U.S. Const., amend. 14. Belluso v. Poythress, 485 F. Supp. 904, 1980 U.S. Dist. LEXIS 11805 (N.D. Ga. 1980).

O.C.G.A. § 21-2-193, by identifying three logically representative members of each party to serve on the committee, and by providing a check against arbitrariness by allowing only one member of the party on the committee to override the unanimous decision of the committee, is narrowly tailored to advance the interests of the state in conducting orderly and efficient elections, and in allowing the parties to choose their candidates, and is not violative of the First and Fourteenth Amendments. Duke v. Cleland, 884 F. Supp. 511, 1995 U.S. Dist. LEXIS 3852 (N.D. Ga. 1995), aff'd, 87 F.3d 1226, 1996 U.S. App. LEXIS 16632 (11th Cir. 1996).

Primary candidate selection procedure not state action. — The procedure for selecting primary candidates set forth in O.C.G.A. § 21-2-193 does not amount to state action since the state does not assist the party members in their decision; it does not join in the decision-making process with the party members; it does not delegate authority to the parties that the parties do not already have; and it does not mandate guidelines for the decision-making process. Duke v. Cleland, 783 F. Supp. 600, 1992 U.S. Dist. LEXIS 6771 (N.D. Ga.), aff'd, 954 F.2d 1526, 1992 U.S. App. LEXIS 1957 (11th Cir. 1992).

State interest in protecting rights of political parties. — State interest in not interfering with (and possibly even facilitating) the rights of political parties to define their membership and their representatives is legitimate and compelling. Duke v. Cleland, 884 F. Supp. 511, 1995 U.S. Dist. LEXIS 3852 (N.D. Ga. 1995), aff'd, 87 F.3d 1226, 1996 U.S. App. LEXIS 16632 (11th Cir. 1996).

Preservation of party autonomy. — The federal district court reads O.C.G.A. § 21-2-191 (only those parties which have cast greater than twenty percent of the votes in the last presidential election may participate in the presidential preference primary) and O.C.G.A. § 21-2-195 (parties are free to set out the rules by which delegates are bound) alongside O.C.G.A. § 21-2-193 (ballot decision-making) as a distinct attempt at preserving party autonomy in the nomination process. Duke v. Cleland, 783 F. Supp. 600, 1992 U.S. Dist.

LEXIS 6771 (N.D. Ga.), aff'd, 954 F.2d 1526, 1992 U.S. App. LEXIS 1957 (11th Cir. 1992).

Exclusion of candidate from ballot. — The Republican Party enjoys a constitutionally protected right of freedom of association, which encompasses its decision to exclude a candidate for the Republican nomination for President of the United States as a candidate on the Republican Primary ballot because the candidate's political beliefs are inconsistent with those of the Republican Party. Duke v. Cleland, 954 F.2d 1526, 1992 U.S. App. LEXIS 1957 (11th Cir.), cert. denied, 502 U.S. 1086, 112 S. Ct. 1152, 117 L. Ed. 2d 279, 1992 U.S. LEXIS 1283 (1992).

Presidential selection candidate committee, acting as representatives of the Republican Party under O.C.G.A. § 21-2-193, did not heavily burden a candidate's First Amendment and Fourteenth Amendment rights, nor voters' associational rights and their right to vote for a candidate of their choice, when it excluded the candidate from the Republican Party's presidential primary ballot. Duke v. Cleland, 87 F.3d 1226, 1996 U.S. App. LEXIS 16632 (11th Cir. 1996).

Voter's rights not burdened. — Voters have a right to vote for the candidate of their choice, but only the candidate of their choice on the ballot, and they cannot argue that, of the universe of candidates, the exclusion of their favorite candidate from the ballot necessarily "heavily burdens" their rights; to so hold would open the ballot to anyone who has some support in the electorate. Duke v. Cleland, 884 F. Supp. 511, 1995 U.S. Dist. LEXIS 3852 (N.D. Ga. 1995), aff'd, 87 F.3d 1226, 1996 U.S. App. LEXIS 16632 (11th Cir. 1996).

RESEARCH REFERENCES

ALR.

Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballots of names of candidates, 78 A.L.R. 398.

Constitutionality of candidate participation provisions for primary elections, 121 A.L.R.5th 1.

21-2-194. [Reserved] Procedure for withdrawal of candidates.

History.

Ga. L. 1973, p. 221, § 1; Ga. L. 1987, p. 1360, § 11; Ga. L. 1994, p. 1406, § 8; repealed by Ga. L. 1997, p. 590, § 20, effective April 14, 1997.

Editor's notes.

Ga. L. 1997, p. 590, § 20 repealed and reserved this Code section, effective April 14, 1997.

21-2-195. Procedures by which delegates and alternates to national nominating conventions selected.

The state executive committee of each political party or body shall determine the method and procedures by which delegates and delegate alternates to the national nominating conventions are to be selected as well as adopt any other rule not inconsistent with this article. The state executive committee of the political party or body shall establish, at least 90 days prior to the presidential preference primary, procedures to be followed in the nomination of candidates for delegates and delegate alternates to the nominating convention of the political party or body. A copy of any rule or regulation adopted by the state executive committee shall be sent to the Secretary of State within seven days after its adoption, to become a public record.

History.
Code 1933, § 34-1005A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1975, p. 1223, § 2; Ga. L. 1979, p. 1316, § 1.
Law reviews.
For note, "Selecting and Certifying National Political Convention Delegates — A Party or a State Right?," see 4 Ga. L. Rev. 875 (1970).

JUDICIAL DECISIONS

Preservation of party autonomy. — The federal district court reads O.C.G.A. § 21-2-191 (only those parties which have cast greater than twenty percent of the votes in the last presidential election may participate in the presidential preference primary) and O.C.G.A. § 21-2-195 (parties are free to set out the rules by which delegates are bound) alongside O.C.G.A. § 21-2-193 (ballot decision-making) as a distinct attempt at preserving party autonomy in the nomination process. Duke v. Cleland, 783 F. Supp. 600, 1992 U.S. Dist. LEXIS 6771 (N.D. Ga.), aff'd, 954 F.2d 1526, 1992 U.S. App. LEXIS 1957 (11th Cir. 1992).

21-2-196. Qualification oath of delegates and alternates to national convention.

Any person selected as a delegate or delegate alternate to such national convention shall file a qualification oath with the Secretary of State pledging support at the convention to the candidate of their political party or body for the office of President of the United States for whom they are selected to support. The oath shall state that the delegate or delegate alternate affirms to support such candidate until the candidate is either nominated by such convention or receives less than 35 percent of the votes for nomination by such convention during any balloting, or until the candidate releases the delegates from such pledge. No delegate shall be required to vote for such candidate after two convention nominating ballots have been completed.

History.
Code 1933, § 34-1006A, enacted by Ga. L. 1973, p. 221, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Intent. — This section reflects the legitimate interest of the state in insuring orderliness in the electoral process, and it provides a means of presenting the political preferences of the people of this state to a political party. Also, the considerable public funds expended in establishing these preferences are an adequate basis for the reasonable conditions imposed by that section. 1980 Op. Att'y Gen. No. 80-104.

21-2-197. Effect of withdrawal of presidential candidate.

Any delegate to a national convention whose presidential candidate withdraws after being entitled to delegate votes pursuant to this article shall be an unpledged delegate to the national convention.

History.
Code 1933, § 34-1007A, enacted by Ga. L. 1973, p. 221, § 1.

21-2-198. Assessment of qualifying fee for candidates listed on presidential preference primary ballot.

No qualifying fee may be assessed for presidential candidates or for candidates for delegate or delegate alternate whose names are listed on a presidential preference primary ballot.

History.
Code 1933, § 34-1009A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1975, p. 1223, § 4.

21-2-199. Election of political party committee members or officers at primary.

The presidential preference primary may be considered as a general primary for any political party wishing to elect committee members or officers therein. Such party shall prescribe by state party charter, bylaws, or rules and regulations regarding qualifying of candidates and the fixing and publishing of qualifying fees, if any.

History.
Code 1933, § 34-1012A, enacted by Ga. L. 1975, p. 1223, § 7.

21-2-200. Applicability of general primary provisions; form of ballot.

A presidential preference primary shall be conducted, insofar as practicable, pursuant to this chapter respecting general primaries, except as otherwise provided in this article. In setting up the form of the ballot, the Secretary of State shall provide for designating the name of the candidate to whom a candidate for delegate or delegate alternate is pledged, if any.

History.
Code 1933, § 34-1011A, enacted by Ga. L. 1975, p. 1223, § 6; Ga. L. 1992, p. 1, § 3; Ga. L. 1994, p. 1406, § 9.

OPINIONS OF THE ATTORNEY GENERAL

Bond referendum may be held on the date of the presidential preference primary, but the bond referendum should be placed on a separate ballot so that voters need not request a party ballot to vote only in the referendum. 1975 Op. Att'y Gen. No. 75-132.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 223 et seq.

C.J.S.
29 C.J.S., Elections, § 198 et seq.

ARTICLE 6
REGISTRATION OF VOTERS

Cross references.

Exceptions to right to register and vote, Ga. Const. 1983, Art. II, Sec. I, Para. III.

Penalties for offenses relating to voter registration, §§ 21-2-561, 21-2-562.

Editor's notes.

Ga. L. 1994, p. 1443, § 3, effective January 1, 1995, repealed the Code sections formerly codified at this article and enacted a new article. The former article consisted of Code Sections 21-2-210 through 21-2-246 and was based on Orig. Code 1863, § 1227; Code 1868, § 1308; Code 1873, § 1281; Code 1882, § 1281; Ga. L. 1894, p. 115, §§ 2, 6-8, 10-12, 14; Ga. L. 1895, p. 115, § 3; Civil Code 1895, §§ 34, 36, 41, 42, 48-50, 52-54, 56-58, 60, 63, 64; Ga. L. 1897, p. 95, § 1; Ga. L. 1899, p. 21, § 1; Ga. L. 1908, p. 58, §§ 1, 4-10; Civil Code 1910, §§ 36, 38, 41, 42, 49, 50, 52, 54-56, 58, 59, 61, 63-66, 68, 70, 71, 73, 74; Ga. L. 1911, p. 167, § 2; Ga. L. 1913, p. 115, §§ 1, 3; Code 1933, §§ 34-103, 34-106 - 34-108, 34-115, 34-203, 34-204, 34-301, 34-303, 34-401, 34-402, 34-404, 34-405, 34-407, 34-408, 34-602 - 34-605, 34-801, 34-803, 34-804, 34-1001, 34-1101; Ga. L. 1943, p. 353, § 3; Ga. L. 1949, p. 1204, §§ 6-11, 13-20, 23, 24, 26, 28-36, 39, 41, 42, 45, 48, 53, 54; Ga. L. 1950, p. 126, § 8; Ga. L. 1955, p. 344, § 1; Ga. L. 1957, p. 385, § 1; Ga. L. 1958, p. 269, §§ 2-8, 10-17, 20-31, 33, 35, 36, 39, 41, 43, 44; Ga. L. 1959, p. 182, § 1; Ga. L. 1960, p. 257, § 1; Ga. L. 1960, p. 955, § 1; Ga. L. 1961, p. 56, § 1; Ga. L. 1961, p. 162, § 1; Ga. L. 1961, p. 164, § 1; Ga. L. 1963, p. 73, §§ 1, 2; Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, §§ 34-601 - 34-607, 34-609 - 34-617, 34-619 - 34-636; Ga. L. 1968, p. 847, § 1; Ga. L. 1968, p. 871, §§ 1-4, 4a; Ga. L. 1969, p. 285, §§ 1, 2; Ga. L. 1969, p. 329, §§ 5a, 7; Ga. L. 1970, p. 383, §§ 1, 2; Ga. L. 1971, p. 270, § 1; Ga. L. 1971, Ex. Sess., p. 61, §§ 1-7; Ga. L. 1974, p. 95, §§ 1-6; Ga. L. 1975, p. 803, §§ 1-4; Ga. L. 1976, p. 457, §§ 1-4; Ga. L. 1976, p. 468, § 1; Ga. L. 1976, p. 473, § 1; Code 1933, § 34-626.1; Ga. L. 1977, p. 1053, § 2; Ga. L. 1978, p. 1004, §§ 6-13, 24, 36; Code 1933, § 34-608; Ga. L. 1978, p. 1023, § 1; Ga. L. 1978, p. 1035, § 1; Ga. L. 1979, p. 955, § 2; Ga. L. 1979, p. 962, § 1; Ga. L. 1979, p. 1080, § 1; Ga. L. 1980, p. 1256, §§ 1, 6; Ga. L. 1981, p. 1238, §§ 4-6; Ga. L. 1981, p. 1718, §§ 2, 3; Ga. L. 1981, p. 1798, §§ 1-3; Code 1981, §§ 21-2-210 - 21-246; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 442, §§ 1, 2; Ga. L. 1982, p. 688, §§ 1, 2; Ga. L. 1982, p. 850, §§ 1, 2; Ga. L. 1982, p. 1292, §§ 3-7; Ga. L. 1982, p. 1512, § 5; Ga. L. 1982, p. 2107, §§ 21-23; Ga. L. 1983, p. 140, §§ 1, 2; Ga. L. 1983, p. 786, § 2; Ga. L. 1983, p. 930, §§ 5, 6; Ga. L. 1984, p. 1, §§ 2-5; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 635, § 1; Ga. L. 1984, p. 677, § 1; Ga. L. 1984, p. 694, § 1; Ga. L. 1984, p. 922, § 1; Ga. L. 1984, p. 1372, § 1; Ga. L. 1984, p. 1430, § 1; Ga. L. 1984, p. 1490, §§ 1, 2; Code 1981, § 21-2-232.1; Ga. L. 1985, p. 206, § 1; Ga. L. 1985, p. 496, §§ 7-12; Code 1981, § 21-2-232.2; Ga. L. 1985, p. 632, §§ 1, 2; Ga. L. 1985, p. 1236, § 1; Ga. L. 1985, p. 1318, §§ 1, 2; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 382, §§ 2, 3; Ga. L. 1986, p. 772, § 2; Ga. L. 1986, p. 932, §§ 1-4; Ga. L. 1986, p. 1028, § 1; Ga. L. 1987, p. 351, § 1; Ga. L. 1987, p. 417, §§ 2, 3; Ga. L. 1987, p. 1360, § 12; Ga. L. 1988, p. 639, § 1; Ga. L. 1988, p. 647, § 1; Ga. L. 1988, p. 752, §§ 1-5; Ga. L. 1988, p. 926, § 1; Ga. L. 1988, p. 928, § 1; Ga. L. 1989, p. 10, § 1; Ga. L. 1989, p. 659, § 1; Ga. L. 1989, p. 661, § 1; Ga. L. 1989, p. 662, § 1; Ga. L. 1989, p. 849, § 1; Ga. L. 1989, p. 1082, § 1; Ga. L. 1990, p. 143, §§ 1, 1A, 2; Ga. L. 1990, p. 243, §§ 5, 6; Ga. L. 1990, p. 1238, § 1; Ga. L. 1990, p. 1282, § 1; Ga. L. 1991, p. 133, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1992, p. 1060, § 1; Ga. L. 1992, p. 1231, § 1; Ga. L. 1992, p. 1815, § 1; Ga. L. 1992, p. 2048, § 1; Ga. L. 1992, p. 2051, § 1; Ga. L. 1992, p. 2345, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 617, §§ 6, 7; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 1406, §§ 10-18.

Ga. L. 1994, p. 1443, § 28, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval [April 15, 1994] for the purpose of authorizing the

Secretary of State to design and distribute such forms and materials and to develop, procure, and install such computer hardware and software as are required under the provisions of this Act and to exercise such administrative authority as such officer deems necessary and proper for the implementation of this Act. For all other purposes, this Act shall become effective January 1, 1995."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Chapter 34-6 and § 34-115 are included in the annotations for this article.

Purpose of registration statutes. — Registration statutes have for their purpose the regulation of the exercise of the right of suffrage, not to qualify or restrict the right to vote. Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221, 1949 Ga. LEXIS 594 (1949) (decided under former Code 1933, § 34-115).

Registration laws are the means or machinery under which proofs are furnished showing the existence of the voter's qualifications. Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221, 1949 Ga. LEXIS 594 (1949) (decided under former Code 1933, § 34-115).

Registration laws must be impartial, uniform, and reasonable, giving to all a fair and reasonable opportunity to exercise such right. Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221, 1949 Ga. LEXIS 594 (1949) (decided under former Code 1933, § 34-115).

Limitation on legislature's power to determine voter qualifications. — The legislature, even in the absence of express constitutional power, can provide for the registration of voters; but where the state Constitution provides who shall be entitled to vote, the legislature cannot take from or add to the qualifications unless the power is granted expressly or by necessary implication. Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221, 1949 Ga. LEXIS 594 (1949) (decided under former Code 1933, § 34-115).

The legislature has wide latitude in determining how the qualifications required by the Constitution may be determined, provided it does not deny the right of franchise by making the exercise of such right so difficult or inconvenient as to amount to a denial of the right to vote. Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221, 1949 Ga. LEXIS 594 (1949) (decided under former Code 1933, § 34-115).

OPINIONS OF THE ATTORNEY GENERAL

For general discussion of powers and duties of county boards of registrars and chief registrars, see 1982 Op. Att'y Gen. No. U82-12.

RESEARCH REFERENCES

ALR.

Constitutionality of statutes in relation to registration before voting at election or primary, 91 A.L.R. 349.

21-2-210. Secretary of State deemed the chief state election official.

The Secretary of State is designated as the chief state election official to coordinate the responsibilities of this state under the National Voter Registration Act of 1993 (P.L. 103-31) as required by 52 U.S.C. Section 20509.

History.
Code 1981, § 21-2-210, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1.

Cross references.
Rights as citizens, § 31-8-111.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2023, "52 U.S.C. Section 20509" was substituted for "42 U.S.C. Section 1973gg-8" at the end of this Code section.

Law reviews.
For article, "Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks," see 67 Emory L.J. 545 (2018).

For comment, "Voter Suppression Post-*Shelby*: Impacts and Issues of Voter Purge and Voter ID Laws," see 71 Mercer L. Rev. 857 (2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-609 and 34A-505 are included in the annotations for this Code section.

Registration dependent upon furnishing required information. — Registration is dependent upon making proper application by furnishing under oath, and over the signature of the applicant, the information required by the statutorily prescribed registration forms. 1976 Op. Att'y Gen. No. 76-2 (decided under former Code 1933, §§ 34-609 and 34A-505).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 177, 183.

C.J.S.
29 C.J.S., Elections, § 59.

21-2-211. List of registered electors; provision of equipment to access and utilize list.

(a) The Secretary of State shall establish and maintain a list of all eligible and qualified registered electors in this state which shall be the official list of electors for use in all elections in this state conducted under this title.

(b)(1) As used in this subsection, the term "equipment" shall include, but not be limited to, computer hardware; computer software; modems, controllers, and other data transmission devices; data transmission lines; scanners and other digital imaging devices; and printers.

(2) The Secretary of State is authorized to procure and provide all of the necessary equipment to permit the county boards of registrars to access and utilize the official list of electors maintained by the Secretary of State pursuant to this Code section, provided that funds are specifically appropriated by the General Assembly for that purpose.

History.
Code 1981, § 21-2-211, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1.

21-2-212. County registrars; appointment; certification; term of service; vacancies; compensation and expenses of chief registrar, registrars, and other officers and employees; budget estimates.

(a) Except in the case in which a county has a board of elections and registration, the judge of the superior court in each county or the senior judge in time of service in those counties having more than one judge shall appoint in accordance with this Code section, upon the recommendation of the grand jury of such county, not less than three nor more than five judicious, intelligent, and upright electors of such county as county registrars. The grand jury shall submit to the judge the names of a number of electors equal to twice the number of persons to be appointed and the appointment shall be made therefrom and shall be entered on the minutes of the court. When making such appointments when appropriate, the judge will designate one of the registrars as chief registrar who shall serve as such during such registrar's term of office, and such designation shall likewise be entered on the minutes of the court. It shall be the duty of the clerk of the superior court to certify the appointments and designation to the Secretary of State within 30 days after the appointments and designation, and commissions shall be issued as for county officers. When certifying such names to the Secretary of State, the clerk of the superior court shall also list the addresses of the registrars. Except in the case in which the local Act creating a county board of elections and registration specifically provides for the appointment and removal by another authority, such judge will have the right to remove one or more of such registrars at any time for cause after notice and hearing. In case of the death, resignation, or removal of a registrar, the judge shall appoint a successor who shall serve until the next grand jury convenes, at which time the grand jury shall submit to the judge the names of two judicious, intelligent, and upright electors of such county; and the judge shall make an appointment from said list, such successor to serve the unexpired term of such registrar's predecessor in office. In the event the grand jury is in session at the time of any such death, removal, or resignation, such grand jury shall immediately submit the names of said electors to the judge for such appointment. Each such appointment or change in designation shall be entered on the minutes of the court and certified as provided in this Code section.

(b)(1) Except as otherwise provided in this subsection, appointees under this article shall serve for a term of four years and until their successors are appointed and qualified, except in the event of resignation or removal as provided in subsection (a) of this Code section. Their terms shall commence on July 1 and expire on June 30 four years thereafter.

(2) The first new grand jury which convenes in each county in the year 2013 shall submit to the judge the list of names as provided in subsection (a) of this Code section. From this list, the judge shall appoint two registrars to serve two-year terms of office and until their respective successors are appointed and qualified and not more than three registrars to serve four-year terms of office and until their respective successors are appointed and qualified. Thereafter, the first new grand jury which convenes in each county in each odd-numbered year shall submit to the judge a list of names equal to twice the number of registrars whose terms are to expire that year. From this list, the judge shall appoint successors to the registrars whose terms are expiring that year who shall then serve terms of office of four years and until their respective successors are selected and qualified.

(3) Such list of names shall be submitted to the judge, who shall appoint the registrars and designate the chief registrar, as needed, prior to June 30. No appointment for a full term shall be made prior to January 1 of the year in which the appointee is to take office. If no such grand jury is convened or, if convened but failed to recommend, the judge shall appoint the registrars without the necessity of any recommendation. In the event that a registrar holds over beyond the end of the registrar's term of office due to the failure to have a successor timely appointed and qualified, the successor shall be appointed to serve the remainder of the term of office and shall not receive a new four-year term of office.

(c) Reserved.

(d) The chief registrar shall be the chief administrative officer of the board of registrars and shall generally supervise and direct the administration of the affairs of the board of registrars. The chief registrar shall act as chairperson of the board of registrars and, as chief registrar, shall perform those functions normally devolving upon the chairperson. The board of registrars shall meet each month on a day selected by the chief registrar to transact the business of the board. The board shall also meet at other times as needed upon the call of the chief registrar or upon the request of two or more of the registrars. The chief registrar shall be compensated in an amount of not less than $61.00 per day for each day of service on the business of the board of registrars. The other registrars shall be compensated in an amount of not less than $48.00 per day for each day of service on the business of the board of registrars. In lieu of the per diem compensation provided for in this subsection, the chief registrar may be compensated in an amount not less than $272.00 per month and the other registrars in an amount not less than $242.00 per month. The per diem or monthly compensation, as the case may be, shall be fixed, subject to the limitations provided for in this subsection,

by the governing authority of each county and shall be paid from county funds. The compensation of other officers and employees appointed and employed under this article shall be fixed by the board of registrars with the approval of the governing authority of each county and shall be paid from county funds.

(e) If, within 90 days of the end of the term or the creation of a vacancy for a county registrar, an appointment is not made in accordance with subsection (a) of this Code section, the governing authority of the county shall appoint the county registrars in lieu of the judge of the superior court. The appointments shall be entered on the minutes of the county governing authority. The county governing authority shall designate one of the registrars as chief registrar, who shall serve as such during such registrar's term of office. Such designation shall likewise be entered on the minutes of such governing authority. It shall be the duty of the county governing authority to certify the appointments and designation to the Secretary of State and the clerk of the superior court within 30 days after such appointments and designation. In certifying such names to the Secretary of State and the clerk of the superior court, the county governing authority shall also list the addresses of the registrars. Such registrars shall serve for the term and in the manner set forth in subsection (a) of this Code section. Any registrar shall have the right to resign at any time by submitting a resignation to the clerk of the superior court. In the event of the death, resignation, or removal of any registrar, such registrar's duties and authority as such shall terminate instantly. Successors shall be appointed as set forth in subsection (a) of this Code section.

(f) The board of registrars of each county shall prepare annually a budget estimate in which it shall set forth an itemized list of its expenditures for the preceding two years and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and shall submit the same at the time and in the manner and form other county budget estimates are required to be filed. No board of registrars shall take or accept any grants or gifts for the purpose of administering this chapter from any source other than from the State of Georgia or the federal government.

History.

Code 1981, § 21-2-212, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 1027, § 4; Ga. L. 1996, p. 145, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 902, § 15; Ga. L. 2005, p. 253, § 22/HB 244; Ga. L. 2010, p. 914, § 7/HB 540; Ga. L. 2011, p. 683, § 5/SB 82; Ga. L. 2017, p. 697, § 5/HB 268; Ga. L. 2021, p. 14, § 14/SB 202; Ga. L. 2023, p. 563, § 5/SB 222, effective May 3, 2023.

The 2021 amendment, effective March 25, 2021, added the last sentence of subsection (f).

The 2023 amendment, effective May 3, 2023, rewrote the last sentence of subsection (f), which read: "No board of registrars shall take or accept any funding, grants, or gifts from any source other than from the governing authority of the county, the State of Georgia, or the federal government."

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of

drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Ga. L. 2023, p. 563, § 1/SB 222, not codified by the General Assembly, provides: "The General Assembly finds that the addition of Code Section 21-2-18 and the revisions to Code Sections 21-2-71 and 21-2-212 in this bill should not be interpreted as an admission by the General Assembly that existing law did not already ban the outside funding of election administration in Georgia. These clarifications and enhancements were deemed necessary because there seemed to be some confusion among certain Georgia counties as to the correct interpretation of existing law."

Law reviews.

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under the 1895 Political Code, former Code 1933, § 34A-104 and former Code Section 21-2-211 are included in the annotations for this Code section.

Judge's duty is official act. — The duty devolving upon the judge from the 1895 Political Code, §§ 50, 51 was an official act, and political interest was not sufficient to disqualify a judge from hearing a petition for mandamus against the judge requiring the judge to appoint a bipartisan board of registrars, and a petition for injunction to restrain the registrars appointed by the judge from func-

tioning. Elliott v. Hipp, 134 Ga. 844, 68 S.E. 736, 1910 Ga. LEXIS 373 (1910) (decided under the 1895 Political Code).

Resignation and subsequent rescission. — Trial court could conclude that the resignation of a member of the board of registrars was not effective until it had been accepted by the superior court judge and that the resignation could be rescinded prior to the time it was accepted. Henry County Bd. of Registrars v. Farmer, 213 Ga. App. 522, 444 S.E.2d 877, 1994 Ga. App. LEXIS 605 (1994) (decided under former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Election laws can be enforced by penalizing officials involved, without penalizing voters. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Effects of errors of officers and voters distinguished. — There is a distinction between the errors of officers conducting elections and errors of the voters themselves. In the former case, since the voter has no power over the officer, the officer's blunder will not disenfranchise the voter, unless it is mandatory under the law, whereas the voter may by the voter's own neglect be disenfranchised. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Removal of registrar. — Findings that voided elections were directly caused by the registrar's failure to follow the law and properly administer the duties of the office were supported by evidence sufficient to warrant the registrar's removal from office for cause. Collier v. Board of Comm'rs, 240 Ga. App. 605, 524 S.E.2d 292.

Nonresident electors granted right to vote under city ordinance do not have any vested rights to their franchised status which would prevent the General Assembly from enacting a registration law having the effect of invalidating their registration certificates. Parkerson v. Malcolm, 227 Ga. 132, 179 S.E.2d 61, 1971 Ga. LEXIS 611 (1971) (decided under former Code 1933, § 34A-104).

Elector not denied right to vote by registrar's negligence. — An elector will not be deprived of the right to vote merely because of the negligent failure of the registrar to enter the elector's name or address on the registry list, or because the elector was registered by a third person with whom the registrar had left the registrar's books, or because of the failure of the registrar to post a list of the electors, or because the registration was made at a place other than that named by the registrar in the notice. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

The power and duties of registration officers should not be so construed as to make the right to vote by registered voters dependent on a strict observance by such officers of minute directions of this former article, thereby rendering the constitutional right of suffrage liable to be defeated through the ignorance or negligence of the registrars. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-603 and former Code Section 21-2-211 are included in the annotations for this Code section.

Precedence of local law in selecting registrars. — Local act creating a county board of elections and registration did not conflict with former § 21-2-212 and it was appropriate to determine by local act the method of selecting the members of the board of elections and registration. 1986 Op. Att'y Gen. No. U86-38 (decided under former Code Section 21-2-211 as it read

prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Section 15-12-81 advertising provision inapplicable. — The advertisement provisions of Ga. L. 1958, p. 686, §§ 1 and 2 (see O.C.G.A. § 15-12-81) are not applicable to the recommendations of the grand jury for county registrars. 1960-61 Ga. Op. Att'y Gen. 209 (decided under Ga. L. 1958, p. 269 and former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Declaration of intent not to serve following appointment. — While electors recommended by the grand jury for the board of registrars for a county may declare their intention not to serve, thereby invalidating the recommendations, their declaration of intent after appointment constitutes a resignation, requiring the superior court judge to appoint successors to serve until the next grand jury convenes. 1973 Op. Att'y Gen. No. U73-31 (decided under former Code 1933, § 34-603 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Political party not required to pay registrars' compensation. — Former Code 1933, § 34-603 did not require that a political party pay any part of the compensation fixed for the county registrars. 1965-66 Op. Att'y Gen. No. 65-27 (decided under former Code Section 21-2-211 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Nonfeasance is cause for removal. — Nonfeasance or any instance where the registrar might not be doing an effective job would be as much a cause for removal from office as malfeasance in office. Op. Att'y Gen. No. 71-168 (decided under former Code 1933, § 34-603 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 177, 183.

C.J.S.
29 C.J.S., Elections, §§ 59, 112, 121.

21-2-213. County deputy registrars; clerical help; appointment of county officer or employee as chief deputy registrar.

(a) The board of registrars in each county may appoint deputy registrars to aid them in the discharge of their duties. The number of deputy registrars appointed to serve shall be determined by the board of registrars. Such deputy registrars shall serve without compensation unless the governing authority of the county, by resolution, authorizes compensation. In appointing deputy registrars, the registrars shall select persons who are reasonably representative of a cross section of significantly identifiable groups of the communities or areas where they are to serve.

(b) The board of registrars in each county may hire clerical help to assist them in their duties if the compensation required therefor has been first approved by the governing authority of the county. Such additional clerks shall be eligible to be appointed as deputy registrars for the purpose of registering voters and performing other duties as may be required, but it shall not be necessary for such clerks to be electors of the county in which employed.

(c) In every county wherein the registrars do not maintain an office which is open and staffed during regular business hours, the registrars

shall designate and appoint as chief deputy registrar a full-time county officer or employee for the purpose of registering eligible electors and performing other duties as may be required by the board of registrars. The governing authority of the county shall provide for the compensation of the chief deputy registrar in an amount not less than $349.60 per month. The name, business address, telephone number, and any other pertinent information relative to the chief deputy registrar shall be forwarded by the registrars to the Secretary of State's office, where such information shall be maintained on file.

History.

Code 1981, § 21-2-213, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 4; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1159, § 16; Ga. L. 2001, p. 902, § 16; Ga. L. 2006, p. 568, § 10/SB 450; Ga. L. 2019, p. 1015, § 8/SB 171.

Administrative rules and regulations.

Rules and regulations for voter registration by registrars and deputy registrars, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.03.

Law reviews.

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-604 and Code Section 21-2-212 are included in the annotations for this Code section.

Delegation of responsibilities by Board of Registrars permissible. — Read together, former § 21-2-212 and § 21-2-384 allow the conclusion that the Board of Registrars has authority to delegate to deputy registrars any of the tasks for which it is responsible. 1981 Op. Att'y Gen. No. 81-70 (decided under former Code Section 21-2-212 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Board of registrars may not "hire" tax collector. — The Election Code does not authorize the Board of Registrars to "hire" the tax commissioner since the commissioner is by law a deputy to the board. 1965-66 Op. Att'y Gen. No. 66-137 (decided prior to 1982 amendment and under former Code 1933, § 34-604 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Oath may be administered in mass. — Persons authorized to register voters pursuant to subsection (c) of O.C.G.A. § 21-2-212 may, after the registration cards have been completed by the applicants, administer the oath to all applicants at the same time and then obtain the required signatures individually. 1983 Op. Att'y Gen. No. 83-42 (decided under former Code Section 21-2-212 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registration in schools outside county. — Registrars and deputy registrars of a county are not authorized to go into a private high school or area vocational school which is located in another county for the purpose of registering qualified applicants enrolled at that school. 1985 Op. Att'y Gen. No. 85-44 (decided under former Code Section 21-2-212 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registration of students from other counties. — Principals and assistant principals of public and private high schools and the directors of area vocational schools are authorized to register all qualified students enrolled in their schools, notwithstanding the fact that the students do not reside in the same county in which the school is located. 1985 Op. Att'y Gen. No. 85-44 (decided under former Code Section 21-2-212 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Other employees of school system not included. — Authority extends only to students and employees of the school and does not extend to other employees of the school system. 1976 Op. Att'y Gen. No. 76-37 (decided under former Code 1933, § 34-604 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 177, 183. 72 Am. Jur. 2d, State & Local Taxation, § 872.

C.J.S.
29 C.J.S., Elections, § 59. 78 C.J.S., Schools & School Districts, § 237.

21-2-213.1. Monthly contingent expense allowance for the operation of the office of the board of registrars.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of the board of registrars, and payable from county funds, a monthly expense allowance for each registrar of not less than the amount fixed in the following schedule:

Population	Minimum Monthly Expenses
0 — 11,889	$ 100.00
11,890 — 74,999	200.00
75,000 — 249,999	300.00
250,000 — 499,999	400.00
500,000 or more	500.00

History.
Code 1981, § 21-2-213.1, enacted by Ga. L. 2001, p. 902, § 17.

21-2-214. Qualifications of registrars and deputy registrars; prohibited political activities; oath of office; privilege from arrest; duties conducted in public.

(a) Members of the board of registrars shall be electors of this state and the county in which they serve, and any deputy registrars shall be electors of this state. All registrars shall be able to read, write, and speak the English language. Registrars and deputy registrars shall have never been convicted of a felony involving moral turpitude unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude and shall never have been convicted of a crime involving fraud, and the appointing authority shall be authorized to investigate the applicant's criminal history before making such appointment.

(b) The office of a member of a county board of registrars, a deputy registrar, a member of a county or municipal board of elections or county or municipal board of elections and registration, or a member of a joint county-municipal board of elections or joint county-municipal board of elections and registration shall be vacated immediately upon such officer's qualifying for any nomination or office to be voted for at a primary or election or qualifying for any nomination or office or qualifying to have such officer's name placed on any primary or election ballot pursuant to Code Sections 21-2-132 and 21-2-153 or giving notice of such officer's intention of write-in candidacy; provided, however, that this Code section shall not apply to a chief deputy registrar who is also an elected public officer and who seeks to qualify for reelection to the public office such chief deputy registrar is presently holding. Nothing contained in this Code section shall cause the office of a member of a county board of registrars, deputy registrar, member of a county or municipal board of elections or county or municipal board of elections and registration, or a member of a joint county-municipal board of elections or joint county-municipal board of elections and registration to be vacated upon qualifying for or having such officer's name placed on the ballot or holding office in a political party or body or serving as a presidential elector.

(c) No member of a county board of registrars, deputy registrar, member of a county or municipal board of elections or county or municipal board of elections and registration, or a member of a joint county-municipal board of elections or joint county-municipal board of elections and registration, while conducting the duties of such person's office, shall engage in any political activity on behalf of a candidate, political party or body, or question, including, but not limited to, distributing campaign literature, engaging in any communication that advocates or criticizes a particular candidate, officeholder, or political party or body, and wearing badges, buttons, or clothing with partisan messages.

(d) Before entering upon the duties of office, each registrar and deputy registrar shall take the following oath before some officer authorized to administer oaths under the laws of this state:

> "I do solemnly swear that I will faithfully and impartially discharge, to the best of my ability, the duties imposed upon me by law as (deputy) registrar."

(e) Registrars, deputy registrars, election superintendents, and poll officers shall be privileged from arrest upon days of primaries and elections, except for fraudulent misconduct of duty, felony, larceny, or breach of the peace.

(f) The registrars shall conduct their duties in public and all hearings on the qualifications of electors shall be conducted in public.

History.

Code 1981, § 21-2-214, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 6; Ga. L. 2001, p. 240, § 13; Ga. L. 2003, p. 517, § 15; Ga. L. 2012, p. 995, § 12/SB 92; Ga. L. 2017, p. 697, § 6/HB 268; Ga. L. 2018, p. 1112, § 21/SB 365.

Administrative rules and regulations.

Rules and regulations for voter registration by registrars and deputy registrars, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.03.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34A-103 are included in the annotations for this Code section.

County registrar was not prohibited from entering municipal election because the restriction on registrars did not apply to municipal elections and because the restriction on municipal registrars did not govern county registrars by definition under former Code 1933, § 34A-103. Jarnagin v. Harris, 138 Ga. App. 318, 226 S.E.2d 108, 1976 Ga. App. LEXIS 2145 (1976) (decided under former Code 1933, § 34A-103 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-605 and former Code Section 21-2-213 are included in the annotations for this Code section.

Words "at a primary or election," as they are used in former Code 1933, § 34-605 (formerly § 21-2-213), include any primary or election, whether or not the conduct of that primary or election is otherwise governed by the Georgia Election Code. 1976 Op. Att'y Gen. No. 76-8 (decided prior to 1986 amendment and under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Code Section 45-2-5 not applicable to registrars. — Qualifications of voter registrars and deputy registrars established by former Code 1933, § 34-605 (formerly § 21-2-213) are unaffected by former Code 1933, § 89-950 (see now O.C.G.A. § 45-2-5) prohibiting counties and municipalities from requiring employees to reside within. 1975 Op. Att'y Gen. No. 75-111 (decided under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Person may hold public office acquired prior to becoming registrar. — Former Code 1933, § 34-605 (formerly § 21-2-213) does not specifically prohibit a person from serving out a term of public office to which elected prior to becoming a registrar or deputy registrar. 1978 Op. Att'y Gen. No. 78-19 (decided under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

A county registrar may serve as a city councilman so long as the person is elected to the council prior to becoming a registrar. 1969 Op. Att'y Gen. No. 69-366 (decided under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Eligibility for nomination to county office after resignation. — A deputy registrar, within six months of having resigned from office, is not eligible to qualify for nomination by primary to a county office. 1980 Op. Att'y Gen. No. 80-40 (decided under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Membership on Democratic Party

county committee would not disqualify a person from serving on the county board of registrars so long as members of the county committee are not voted for at a primary or election. 1968 Op. Att'y Gen. No. 68-470 (decided under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Deputy registrars may serve without compensation. — So long as the deputy registrars possess the qualifications required by the Georgia Election Code, there is no prohibition against these persons serving without compensation. 1971 Op. Att'y Gen. No. 71-168 (decided under former Code 1933, § 34-605 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Display of signs in business used as registration site. — Private businesses which are used as voter registration places may not display political signs or posters supportive of a particular political candidate, party, or issue. 1986 Op. Att'y Gen. No. 86-14 (decided under former Code Section 21-2-213 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 177, 183.
C.J.S.
29 C.J.S., Elections, § 59 et seq.
ALR.
Waiver of privilege against or nonliability to arrest in civil action, 8 A.L.R. 754.

21-2-215. Main office of board of registrars; location; business hours; additional registration places; educators to serve as deputy registrars; training; registration cards and papers.

(a) For the purpose of taking and processing applications for registration and for the purpose of registering electors, such number of registrars or deputy registrars as shall be designated by the chief registrar shall be stationed in the main office of the board of registrars.

(b) In those counties in which the registrars have a main office separate from other county offices, the main office shall be in the courthouse or other public building at the county site. In those counties in which the registrars do not have an office separate from other county offices, the office of the chief deputy registrar or other office designated by the board of registrars which is accessible at all times during normal business hours shall be deemed to be the main office of the board of registrars.

(c) The main office of the board of registrars in each county shall remain open for business during regular office hours on each business day, except Saturday. The main office, or such other offices, shall be open at such designated times other than the normal business hours as shall reasonably be necessary to facilitate registration and at such other hours as will suit the convenience of the public.

(d) The board of registrars may designate additional registration places throughout the county on a temporary or permanent basis. These additional offices for registration will have fixed hours of operation. All

voter registration places shall be places open to the general public and frequented by the general public. Such places for temporary or permanent voter registration may include, but shall not be limited to, any of the following: churches, synagogues, governmentally funded and managed public housing facilities, public social agencies, public child care centers, public recreation centers, public buildings and shopping centers, multifamily apartment complexes, child care centers, and educational facilities, provided that such places are in fact open to and frequented by the general public.

(e) Additional registration places and the hours of operation shall be advertised in a newspaper of general circulation in the county or in the form of a public service announcement on radio or television one or more times at least three days prior to the first day for registration.

(f) The State Election Board shall adopt rules and regulations setting forth criteria governing the selection of voter registration places in conformity with the provisions of subsection (d) of this Code section. Boards of registrars shall not adopt rules nor utilize procedures inconsistent with such rules and regulations adopted by the State Election Board; provided, however, that nothing contained in this subsection shall supersede the ultimate authority of local boards in selecting additional voter registration sites.

(g) Each principal or assistant principal of every public or private high school, the president of every public or private college or university, the president of each state supported technical institute in this state, and the designee of such principal, assistant principal, college or university president, or state supported technical institute president shall be a deputy registrar of the county in which the school, college, university, or institute is located for the purpose of receiving voter registration applications from those qualified applicants who are enrolled students within the principal's school or the president's college, university, or institute or who are employed by the private high school, the school system, the college or university, or the state supported technical institute, notwithstanding the fact that such students or employees are not residents of the county in which the school, college, university, or institute is located. Such principals, assistant principals, presidents, and their designees shall inform their students and employees of the availability of such voter registration and shall provide reasonable and convenient procedures to enable such persons who are qualified applicants to register. The principal of each public or private high school, the president of each public or private college or university, and the president of each state supported technical institute are authorized to invite other deputy registrars to the school, college, university, or institute for the purpose of conducting voter registration. All such deputy registrars authorized by this subsection shall receive

annual training by the board of registrars of the county in which such deputy registrar shall work.

(h) The completed registration cards in the custody of the board of registrars and the other papers of the board of registrars shall be secured and maintained in the main office of the board of registrars, with the exception that completed registration cards may be retained temporarily at permanent additional voter registration places established under this Code section but shall be transmitted to the main office as expeditiously as possible by a registrar or deputy registrar or by United States mail. In no event shall the completed registration cards be temporarily retained beyond the end of the next business day. However, in counties in which a computer system for the electronic imaging of the entire voter registration card or the signature of the voter is operational and permits the registrars to view the signature of the voter electronically, the completed registration cards may be stored in a secure area outside of the main office of the board of registrars, provided that such cards may be retrieved within a reasonable time in the event that the actual card is needed. The electronic image of the voter's signature may be used by the registrars in the same manner as the original signature on the voter registration card to verify absentee ballot applications, absentee ballots, petitions, and other documents which require the registrars to compare the signature of the voter on the document to the signature on the voter's registration card.

(i) The board of registrars shall enter into the state-wide voter registration system credit for voting by qualified electors to the Secretary of State within 60 days of a primary or election for the purpose of maintaining the list of electors and voter history.

History.
Code 1981, § 21-2-215, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 14; Ga. L. 2005, p. 253, § 23/HB 244.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-2-218 are included in the annotations for this Code section.

Former Code 1933, § 34-610 created three categories of registration places: the main office of the board of registrars; other fixed places which may be designated as registration places; and additional nonfixed registration places which shall be designated in even-numbered years by the chief registrar of counties with a population of over 100,000 according to a United States decennial census of 1960 or later. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided prior to first 1986 amendment of Code Section 21-2-218, which deleted the provision relating to counties with a population of 100,000 or more).

Purpose of advertising requirement. — The advertisement requirement of former § 21-2-218 was a salutary one. It encompassed within its purposes both the interest of the citizen in learning of convenient places to register to vote, and

the interest of the voters in knowing where registration was being conducted so that any imbalance in chosen locations became apparent and could be challenged. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Reference in former § 21-2-218 to "additional registration places" was a reference solely to "additional voter registration places" contained in the former section and did not require the one-time advertisement of registration places which are "fixed." Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Advertisement provision of former § 21-2-218 was mandatory and not satisfied by publicity through news articles. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Enforcement of advertising requirement. — Advertisement provision of former § 21-2-218 could be enforced as to future registration by mandamus or injunction against the registrars. In any instance where it was willfully abrogated by the responsible public officers, they were subject to criminal prosecution under former § 21-2-596. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Failure to advertise had no effect on otherwise valid registration. — The incorrect registrations of otherwise qualified voters were not invalid because they were processed at additional registration places which were not advertised in compliance with former § 21-2-218, given a finding of good faith. Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981) (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Designation of church as voter registration site. — A complaint seeking a declaratory judgment that the acts and policies of the local board of registrars in not designating the plaintiff-church as a voter registration site were illegal was properly dismissed, as: (1) mandamus, used to compel official action when a public official has discretion to act, but arbitrarily and capriciously refuses to do so, was the appropriate remedy; and (2) nothing in former subsection (f) required that churches be designated as voter registration sites. Fourth St. Baptist Church v. Board of Registrars, 253 Ga. 368, 320 S.E.2d 543, 1984 Ga. LEXIS 951 (1984) (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-610 and former Code Section 21-2-218 are included in the annotations for this Code section.

County residency requirement. — Registrar may only conduct registration of electors within the registrat's county for residents of that county. 1980 Op. Att'y Gen. No. 80-63 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registration may not be done house-to-house. — The Georgia Election Code does not contemplate the registration of electors by having the registration official move from house to house for the purpose of registering voters. 1965-66 Op. Att'y Gen. No. 66-163 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registrar's discretion in designating places for registration. — The discretion formerly given a chief registrar in designating places for registration did not specify that the registrar had uncontrolled discretion; thus, the registrar's designations could be based upon the pur-

pose for which the power existed, the chief purpose being that of registering voters. 1971 Op. Att'y Gen. No. 71-168 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Main registration office had to be at county site. — Registration of electors and the other functions performed by the registrars were not administrative services but were official functions; therefore, the main office for registration of electors had to be located at the county site, with additional offices located elsewhere in the county as permitted by former Code. 1974 Op. Att'y Gen. No. 74-25 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

No office could be located outside the county. — County registrars could not lawfully establish a place outside the county which they used for the purpose of receiving and acting upon applications for registration of voters. 1975 Op. Att'y Gen. No. 75-148 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Words "offices" or "other fixed places" in former § 21-2-218 could not be read so as to restrict the physical characteristics of additional voter registration places. 1982 Op. Att'y Gen. No. 82-38 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

If office of county board of registrars was staffed only on part-time basis and was not open during regular office hours on each business day, except Saturday, the office of the tax collector or tax commissioner was to be designated the main office of the board of registrars and the records of the board of registrars was to be maintained in the office of the tax collector or tax commissioner. 1985 Op. Att'y Gen. No. U85-13 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Church could be used as a place for voter registration provided the church was open to the general public and frequented by such. A church was open to, and frequented by, the general public if it was open to all worshipers and was frequented by worshipers who were not members of the church's congregation. 1980 Op. Att'y Gen. No. U80-38 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Supervision and security for additional offices had to be of same degree as, but not necessarily exactly the same as, that which was provided for main office. 1982 Op. Att'y Gen. No. 82-38 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Location and operation of additional voter registration places had to strictly comply with the former requirements of former Chapter 2 concerning supervision and security. 1982 Op. Att'y Gen. No. 82-38 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Sunday hours. — Former Code 1933, § 34-610 permitted the board of registrars of a county to extend the statutory minimum office hours for registration of voters to include hours on Sundays. 1980 Op. Att'y Gen. No. 80-82 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Where blank and completed registration cards kept. — With respect to additional voter registration places, blank registration cards could be only (1) at main office; (2) in transit to additional voter registration place; (3) at additional voter registration place, and then after hours of operation, (4a) if voter registration place had same degree of supervision and security as main office, at said additional voter registration site overnight, or, (4b) if requisite supervision and security was unable to be maintained overnight at additional voter registration place, then, in transit back to main office until such time as they were issued again. 1982 Op. Att'y Gen. No. 82-38 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Completed registration cards could be (1) at additional voter registration place during times at which registration was taking place, (2) in transit to main office, and, finally, (3) at main office. 1982 Op. Att'y Gen. No. 82-38 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Because all registration cards had to be kept in places for registration and because completed registration cards had to be kept in main office of registrars, neither blank nor completed registration cards could be kept at any time in anyone's private home. 1982 Op. Att'y Gen. No. 82-38 (decided under former Code Section 21-2-218 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Blank registration cards could not be issued to an office but had to be issued to deputy registrars, and could not be removed from a registration office. 1978 Op. Att'y Gen. No. 78-39 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Maintenance of voter registration cards. — Though it was illegal to maintain voter registration lists and polling places on segregated basis, voter registration cards had to be maintained in manner most conducive to administrative convenience. 1962 Ga. Op. Att'y Gen. 225 (decided under former Code 1933, § 34-610 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 177 et seq.
C.J.S.
29 C.J.S., Elections, §§ 59, 70, 73.
ALR.
Waiver of privilege against or nonliability to arrest in civil action, 8 A.L.R. 754.

21-2-216. Qualifications of electors generally; reregistration of electors purged from list; eligibility of nonresidents who vote in presidential elections; retention of qualification for standing as elector; evidence of citizenship; check of convicted felons and deceased persons databases.

(a) No person shall vote in any primary or election held in this state unless such person shall be:

(1) Registered as an elector in the manner prescribed by law;

(2) A citizen of this state and of the United States;

(3) At least 18 years of age on or before the date of the primary or election in which such person seeks to vote;

(4) A resident of this state and of the county or municipality in which he or she seeks to vote; and

(5) Possessed of all other qualifications prescribed by law.

(b) In addition to the qualifications in subsection (a) of this Code section, no person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon comple-

tion of the sentence and no person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

(c) Any person who possesses the qualifications of an elector except that concerning age shall be permitted to register to vote if such person will acquire such qualification within six months after the day of registration; provided, however, that such person shall not be permitted to vote in a primary or election unless such person shall be at least 18 years of age on or before the date of the primary or election in which such person seeks to vote.

(d) Notwithstanding any other provision of this article, any person who was qualified and registered to vote on June 24, 1964, shall not be required to reregister under the terms of this article unless such person shall have become or becomes disqualified to vote by reason of having been purged from the list of electors or for any other reason whatsoever, in which event such person shall, in order to become registered to vote, reregister under the terms of this article.

(e) If any citizen of this state begins residence in another state after the thirtieth day next preceding any election for President and Vice President and, for that reason, does not satisfy the registration requirements of that state, such citizen shall be allowed to vote for presidential and vice presidential electors, in that election, in person in this state if such citizen satisfied, as of the date of such citizen's change of residence, the requirements to vote in this state, or by absentee ballot in this state if such citizen satisfies, but for such citizen's nonresident status and the reason for such citizen's absence, the requirements for absentee voting in this state.

(f) No person shall remain an elector longer than such person shall retain the qualifications under which such person registered.

(g)(1) On and after January 1, 2010, an application for registration under this chapter shall be accompanied by satisfactory evidence of United States citizenship. Upon the receipt of an application without satisfactory evidence of citizenship, the board of registrars shall notify the applicant in writing of the requirement to provide satisfactory evidence of citizenship. The board of registrars shall not determine the eligibility of the applicant until and unless satisfactory evidence of citizenship is supplied by the applicant. If the initial application is received without satisfactory evidence of citizenship prior to the close of voter registration preceding an election, but the applicant supplies satisfactory evidence of citizenship on or prior to the date of such election and the applicant is found eligible to vote, the applicant shall be permitted to vote in the election and any run-off elections resulting therefrom and subsequent elections; provided, however, that those electors who register to vote for the first

time in this state by mail also shall supply current and valid identification as required in subsection (c) of Code Section 21-2-220. In the event the applicant does not respond to the request for the missing information within 30 days following the sending of notification to provide satisfactory evidence of citizenship, the application shall be rejected.

(2) Satisfactory evidence of citizenship shall include any of the following:

(A) The number of the applicant's Georgia driver's license or identification card issued by the Department of Driver Services if the applicant has provided satisfactory evidence of United States citizenship to the Department of Driver Services or a legible photocopy of the applicant's driver's license or identification card issued by an equivalent government agency of another state if the agency indicates on the driver's license or identification card that the applicant has provided satisfactory evidence of United States citizenship to the agency;

(B) A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the board of registrars;

(C) A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the board of registrars of the applicant's United States passport;

(D) A presentation to the board of registrars of a legible copy of the applicant's United States naturalization documents or the alien registration number from the applicant's naturalization documents. If only the applicant's alien registration number is provided, the applicant shall not be found eligible to vote until the applicant's alien registration number is verified with the United States Citizenship and Immigration Services by the board of registrars;

(E) Other documents or methods of proof that are established pursuant to the federal Immigration Reform and Control Act of 1986 (P. L. 99-603);

(F) The applicant's Bureau of Indian Affairs card, tribal treaty card, or tribal enrollment card; and

(G) For residents of this state who are United States citizens but are not in possession of any of the documents or methods of proof enumerated under subparagraphs (A) through (F) of this paragraph, other documents or methods of proof for establishing evidence of United States citizenship which shall be promulgated by rule and regulation of the State Election Board.

(3) Notwithstanding any provision of this subsection, any person who is registered in this state on December 31, 2009, shall be deemed to have provided satisfactory evidence of citizenship and shall not be required to submit evidence of citizenship.

(4) After citizenship has been demonstrated to a board of registrars, an elector shall not be required to resubmit satisfactory evidence of citizenship in that or any other county in this state so long as the person continuously remains an elector of this state.

(5) For the purposes of this subsection, proof of voter registration from another state shall not be satisfactory evidence of citizenship.

(6) After a person has submitted satisfactory evidence of citizenship, the board of registrars shall indicate such information on the elector's voter registration record. After two years, the board of registrars may destroy all documents that were submitted as evidence of citizenship.

(7) The Secretary of State shall establish procedures to match an applicant's voter registration information to the information contained in the data base maintained by the Department of Driver Services for the verification of the accuracy of the information provided on the application for voter registration, including whether the applicant has provided satisfactory evidence of United States citizenship.

(h) Prior to approving the application of a person to register to vote, the registrars may check the data bases of persons convicted of felonies and deceased persons maintained by the Secretary of State.

History.

Code 1981, § 21-2-216, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2009, p. 712, § 1/SB 86; Ga. L. 2011, p. 683, § 6/SB 82; Ga. L. 2017, p. 697, § 7/HB 268; Ga. L. 2019, p. 7, § 5/HB 316.

Cross references.

Prohibition against denial of right to vote for failure to pay poll tax or other tax, U.S. Const., amend. 24.

Right to register and vote, Ga. Const. 1983, Art. II, Sec. I, Para. II.

Disqualification from registering or voting, Ga. Const. 1983, Art. II, Sec. I, Para. III.

Informing students 18 years and over regarding right to register and vote, § 20-2-310.

Penalty for voting by unqualified elector, § 21-2-571.

Penalty for poll officer who allows unqualified person to vote, § 21-2-590.

Administrative rules and regulations.

Verification of United States citizenship of applicants for voter registration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.06.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1895, § 36, former Code 1910, § 36, former Code 1933,

§ 34-601 et seq., and former Code Sections 21-2-217 and 21-2-219 are included in the annotations for this Code section.

Georgia may require its voters to be bona fide residents to register to vote, but it may not require any length of residence as a condition to registering to vote. Abbott v. Carter, 356 F. Supp. 280, 1972 U.S. Dist. LEXIS 14294 (N.D. Ga. 1972) (decided under former Code 1933, § 34-602 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Compliance with federal privacy law. — State violated the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(B), when it denied voter registration applicants the right to register to vote because they refused to disclose their social security numbers (SSN); disclosing one's SSN was not material in determining whether that person was qualified to vote under state law. Schwier v. Cox, 412 F. Supp. 2d 1266, 2005 U.S. Dist. LEXIS 40002 (N.D. Ga. 2005), aff'd, 439 F.3d 1285, 2006 U.S. App. LEXIS 3656 (11th Cir. 2006).

In order to be entitled to register as a voter, person must take prescribed oath, by which the person is required to depose, in effect, that the person possesses, or will by a designated day in the future possess, all the legal qualifications of a voter. Cole v. McClendon, 109 Ga. 183, 34 S.E. 384, 1899 Ga. LEXIS 606 (1899); Drake v. Drewry, 112 Ga. 308, 37 S.E. 432, 1900 Ga. LEXIS 134 (1900) (decided under former Code 1895, § 36).

Person not qualified voter if has not taken required oath. — Although a person's name may appear on the registration list, the person is not a qualified voter if the person has not taken the oath required by former Code 1910, § 36. Chapman v. Sumner Consol. Sch. Dist., 152 Ga. 450, 109 S.E. 129, 1921 Ga. LEXIS 121 (1921); Stephens v. Ball Ground Sch. Dist., 153 Ga. 690, 113 S.E. 85, 1922 Ga. LEXIS 151 (1922) (decided under former Code 1910, § 36).

Fact that name signed to oath in voters' book prima facie evidence that oath administered. — The fact that one's name was signed to the oath in the voters' book will be prima facie evidence that the oath was administered as required by former Code 1910, § 36, and a substantial compliance therewith was sufficient. Chapman v. Sumner Consol. Sch. Dist., 152 Ga. 450, 109 S.E. 129, 1921 Ga. LEXIS 121 (1921) (decided under former Code 1910, § 36).

Compliance where attention called to oath's content and name subscribed. — Where the attention of the voters was called to the contents of the registration oath and the voters subscribed their names thereto, this was a substantial compliance with the requirement as to administering such an oath. Brown v. City of Atlanta, 152 Ga. 283, 109 S.E. 666, 1921 Ga. LEXIS 78 (1921) (decided under former Code 1910, § 36).

Requirement that registration cards be signed. — By failing to sign their registration cards, individuals never took the oath required to qualify them as voters in this state and, therefore, they never became lawfully registered voters who were authorized to cast ballots. Johnson v. Byrd, 263 Ga. 173, 429 S.E.2d 923, 1993 Ga. LEXIS 479 (1993) (decided under former Code Section 21-2-217 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Residence in political subdivision may be required. — County registrars and the State of Georgia have the power to require that voters be bona fide residents of the relevant political subdivision. McCoy v. McLeroy, 348 F. Supp. 1034, 1972 U.S. Dist. LEXIS 11964 (M.D. Ga. 1972) (decided under former Code 1933, § 34-601 et seq. as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

County registrars may determine whether residence requirements are met. — County registrars are free to take reasonable and adequate steps to see that all applicants for the right to register to vote actually fulfill the requirements of bona fide residence. McCoy v. McLeroy, 348 F. Supp. 1034, 1972 U.S. Dist. LEXIS 11964 (M.D. Ga. 1972) (decided under former Code 1933, § 34-601 et seq. as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Indicia of residence. — Since residents of Georgia are prohibited from operating out-of-state licensed motor vehicles in Georgia, a person who regularly drives

an out-of-state licensed motor vehicle in Georgia has already determined and is evidencing that person determination that one is not a resident of Georgia for purposes of the former provisions. McCoy v. McLeroy, 348 F. Supp. 1034, 1972 U.S. Dist. LEXIS 11964 (M.D. Ga. 1972) (decided under former Code 1933, § 34-601 et seq. as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Voting by felons. — Even though felons may have remained registered voters, they still could not have legally voted and their votes could still have been challenged even after they had been cast. Johnson v. Byrd, 263 Ga. 173, 429 S.E.2d 923, 1993 Ga. LEXIS 479 (1993) (decided under former Code Section 21-2-219 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-103 and 34-609 and former Code Sections 21-2-217 and 21-2-219 are included in the annotations for this Code section.

Completion of sentence for crime of moral turpitude a prerequisite to registering to vote. — If a fine is imposed where authorized by statute in addition to and independent of any sentence of probation, a person may not register and vote until the sentence is complete in all aspects including the completion of the payment of the fine imposed. If the fine is not paid at the end of probation, then the sentence is not completed. 1984 Op. Att'y Gen. 84-33 (decided under former Code Section 21-2-217 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Application inquiring as to race. — Registration to vote may not be conditioned upon an applicant supplying race on a registration application, though race may be requested as an optional part of the registration process. 1995 Op. Att'y Gen. No. 95-35.

Judicial determination of mental incompetence. — A separate, judicial determination must be made that a person is "mentally incompetent" prior to the removal of a person's right to vote. 1995 Op. Att'y Gen. No. 95-27.

Disclosure of social security numbers. — Social security number disclosure required by former Code 1933, §§ 34-103 and 34-609 is exempted by § 7(a) (5 U.S.C. § 552a note) of the Privacy Act of 1974 from the prohibition which prohibits state and local governments, as well as federal agencies, from denying to any individual any right, benefit, or privilege afforded by law for the individual's refusal to disclose social security number. 1976 Op. Att'y Gen. No. 76-6 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Lack of information on registration card and absentee ballot application. — Where there is an absence of information on a registration card, and a consequent lack of correspondence between that source of information and the information provided on the completed absentee ballot application, the registrar may properly request the absentee ballot applicants to furnish all the information which is sought by former Code 1933, §§ 34-103 and 34-609. In the event the applicant does not furnish the requested information, the application may be rejected. 1976 Op. Att'y Gen. No. 76-2 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Where the registration card corresponding to an otherwise proper application for absentee ballot is signed but is otherwise incomplete in some respect, until the completion of proceedings in accordance with O.C.G.A. §§ 21-2-236 or former 21-3-137, as the case may be, the registrar may not refuse to deliver the absentee ballot unless the absence of information sought by the registration card on file gives rise to a question as to the applicant's identity. In the latter event, the registrar may request additional information, including that sought by the former provisions, and may, if the applicant re-

fuses to furnish the information requested, reject the absentee ballot application. 1976 Op. Att'y Gen. No. 76-2 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Telephone numbers. — Voter registrars have no authority to request the inclusion of a telephone number on a voter registration card, and in the absence of statutory authority either to require or to request that an elector provide a telephone number, whether listed or unlisted, for a voter registration card, the disclosure of an unlisted number pursuant to an Open Records Act, O.C.G.A. § 50-18-70 et seq., request may constitute an unwarranted invasion of privacy. Hence, a voter's unlisted telephone number should not be disclosed by voter registrars under an Open Records Act request. 1990 Op. Att'y Gen. No. 90-5 (decided under former Code Section 21-2-217 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

County residency requirement. — Registrar may only conduct registration of electors within county for residents of that county. 1980 Op. Att'y Gen. No. 80-63 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Voting in elections held pursuant to § 3-4-41. — Registered and qualified voters in municipal elections may sign petitions and vote in both municipal and county elections held pursuant to O.C.G.A. § 3-4-41, but a county referendum is only binding on the unincorporated areas of the county. 1985 Op. Att'y Gen. No. U85-48 (decided under former Code Section 21-2-219 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registration is dependent upon making proper application by furnishing under oath, and over the signature of the applicant, the information required by the statutorily prescribed registration forms. 1976 Op. Att'y Gen. No. 76-2 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registration to vote for President after moving to another state. — A citizen of Georgia who moves to another state, beginning residence therein after the thirtieth day next preceding the election for President and Vice-President, should be permitted to register to vote for such officers up to 14 days prior to the election, and to vote, either in person or by absentee ballot. 1972 Op. Att'y Gen. No. U72-51 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

School bond elections. — A person otherwise eligible to vote may vote in school bond elections in this state. 1969 Op. Att'y Gen. No. 69-300 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Out-of-state woman married to Georgia resident may vote. — A married woman whose husband has his legal residence in Georgia may register to vote in this state even though she is not physically domiciled within the state. 1975 Op. Att'y Gen. No. 75-77 (decided under former Code 1933, §§ 34-103 and 34-609 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, §§ 97 et seq., 180 et seq.

C.J.S.

29 C.J.S., Elections, § 32 et seq.

ALR.

Constitutionality of voter participation provisions for primary elections, 120 A.L.R.5th 125.

Validity, construction, and application of state criminal disenfranchisement provisions, 10 A.L.R.6th 31.

Validity of statute requiring proof and disclosure of information as condition of registration to vote, 48 A.L.R.6th 181.

Validity of statute providing for purging voter registration lists of inactive voters, 51 A.L.R.6th 287.

21-2-217. Rules for determining residence.

(a) In determining the residence of a person desiring to register to vote or to qualify to run for elective office, the following rules shall be followed so far as they are applicable:

(1) The residence of any person shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom;

(2) A person shall not be considered to have lost such person's residence who leaves such person's home and goes into another state or county or municipality in this state, for temporary purposes only, with the intention of returning, unless such person shall register to vote or perform other acts indicating a desire to change such person's citizenship and residence;

(3) A person shall not be considered to have gained a residence in any county or municipality of this state into which such person has come for temporary purposes only without the intention of making such county or municipality such person's permanent place of abode;

(4) If a person removes to another state with the intention of making it such person's residence, such person shall be considered to have lost such person's residence in this state;

(4.1) If a person removes to another county or municipality in this state with the intention of making it such person's residence, such person shall be considered to have lost such person's residence in the former county or municipality in this state;

(5) If a person removes to another state with the intention of remaining there an indefinite time and making such state such person's place of residence, such person shall be considered to have lost such person's residence in this state, notwithstanding that such person may intend to return at some indefinite future period;

(6) If a person removes to another county or municipality within this state with the intention of remaining there an indefinite time and making such other county or municipality such person's place of residence, such person shall be considered to have lost such person's residence in the former county or municipality, notwithstanding that such person may intend to return at some indefinite future period;

(7) The residence for voting purposes of a person shall not be required to be the same as the residence for voting purposes of his or her spouse;

(8) No person shall be deemed to have gained or lost a residence by reason of such person's presence or absence while enrolled as a

student at any college, university, or other institution of learning in this state;

(9) The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention;

(10) No member of the armed forces of the United States shall be deemed to have acquired a residence in this state by reason of being stationed on duty in this state;

(11) If a person removes to the District of Columbia or other federal territory, another state, or foreign country to engage in government service, such person shall not be considered to have lost such person's residence in this state during the period of such service; and the place where the person resided at the time of such person's removal shall be considered and held to be such person's place of residence;

(12) If a person is adjudged mentally ill and is committed to an institution for the mentally ill, such person shall not be considered to have gained a residence in the county in which the institution to which such person is committed is located;

(13) If a person goes into another state and while there exercises the right of a citizen by voting, such person shall be considered to have lost such person's residence in this state;

(14) The specific address in the county or municipality in which a person has declared a homestead exemption, if a homestead exemption has been claimed, shall be deemed the person's residence address; and

(15) For voter registration purposes, the board of registrars and, for candidacy residency purposes, the Secretary of State, election superintendent, or hearing officer may consider evidence of where the person receives significant mail such as personal bills and any other evidence that indicates where the person resides.

(b) In determining a voter's qualification to register and vote, the registrars to whom such application is made shall consider, in addition to the applicant's expressed intent, any relevant circumstances determining the applicant's residence. The registrars taking such registration may consider the applicant's financial independence, business pursuits, employment, income sources, residence for income tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, and other such factors that the registrars may reasonably deem necessary to determine the qualification of an applicant to vote in a primary or

election. The decision of the registrars to whom such application is made shall be presumptive evidence of a person's residence for voting purposes.

History.

Code 1981, § 21-2-217, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 9; Ga. L. 2003, p. 517, § 16.

Cross references.

Right of nonresident to vote, § 1-2-9.

Law reviews.

For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-632 and former Code Section 21-2-241 are included in the annotations for this Code section.

Residency requirement of Commissioner met. — In a case involving the residency requirements of O.C.G.A. §§ 21-2-217(a) and 46-2-1(b), the trial court properly granted a Commissioner's motion for summary judgment because the evidence established the Commissioner's residence in District Two at least 12 months prior to the Commissioner's election to the Public Service Commission; pursuant to O.C.G.A. § 19-2-3, the domicile of the Commissioner's spouse in another district was not presumed to be the Commissioner's domicile. Dozier v. Baker, 283 Ga. 543, 661 S.E.2d 543, 2008 Ga. LEXIS 420 (2008).

In ruling a candidate was not qualified to be elected as a member of the commission from a Georgia Public Service Commission district because the candidate did not meet the residency requirements of O.C.G.A. § 46-2-1(b), the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring the other applicable portions of § 21-2-217(a) to determine the candidate's residency. Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62, 2008 Ga. LEXIS 854 (2008).

County residents' challenge to a school board candidate's residency qualification under O.C.G.A. § 45-2-1(1) and Ga. Const. 1983, Art. VIII, Sec. V, Para. II, was barred by res judicata because another challenger had raised the same challenge, and it had been resolved against the challenger by the county's board of elections. Lilly v. Heard, 295 Ga. 399, 761 S.E.2d 46, 2014 Ga. LEXIS 536 (2014).

Irrebuttable presumption of married woman's residence unconstitutional. — The joint operation of former Code 1933, §§ 79-403, 79-407 and 34-632 (see O.C.G.A. §§ 19-2-3 and 19-2-6), and former § 21-2-241, respectively, insofar as it established an irrebuttable presumption that the domicile and residence of a married woman was that of her husband, and thereby prevents her from registering to vote in Georgia, violated U.S. Const., amend. 19. Kane v. Fortson, 369 F. Supp. 1342, 1973 U.S. Dist. LEXIS 10431 (N.D. Ga. 1973) (decided prior to 1982 amendment to former Code 1933, § 34-632).

Husband and wife were qualified to vote in a city election where their testimony showed that (1) the husband grew up in the city and entered the military, and that all of his relatives still lived in the city; (2) when he retired from the military in 1993, they had a house in another city, but always considered the city to be their home, (3) the husband worked for the city, and they would regularly travel back and forth between the two cities, (4) they attended church in the city and had a trailer there which they sold two or three years earlier, (5) after the sale of the trailer, they would stay in the city with the husband's mother, (6) the husband apparently still owned some real property in the city and was in the city almost every day, (7) the wife's bank account was in the city and she had voted in

the city for 16 years, and (8) their expressed intent was to keep their house in the other city temporarily and to return to the city permanently. Holton v. Hollingsworth, 270 Ga. 591, 514 S.E.2d 6.

Federal suit asserting voter purging from rolls. — In a suit asserting a county was unlawfully purging voters from the registration rolls, the court denied the defendants' motion to dismiss because the plaintiffs did not challenge the enactment of a state law, but merely the defendants' implementation and enforcement of the law; thus, the defendants were not entitled to legislative immunity. Ga. State Conf. of the NAACP v. DeKalb County Bd. of Registration Elections, 484 F. Supp. 3d 1308, 2020 U.S. Dist. LEXIS 162683 (N.D. Ga. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-632 and former Code Section 21-2-241 are included in the annotations for this Code section.

Individual's intent as to determination of domicile. — A registrar must acquire and examine the available evidence in order to ascertain the intent of each individual, on a case by case basis, to determine the domicile of that individual. 1990 Op. Att'y Gen. No. 90-1 (decided under former Code Section 21-2-241 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

One who moves away from a county and makes a home elsewhere forfeits right to vote in that county. 1965-66 Op. Att'y Gen. No. 65-56 (decided under former Code 1933, § 34-632 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Residence of person between 18 and 21 years of age. — A citizen over 18 years but under 21 years is sui juris for voting purposes and the citizen can establish a residence apart from the residence of parents. However, such citizens must still fulfill the residence requirements established by law and each application should be decided by the voter registrars in accordance with established principles of determining residence. 1971 Op. Att'y Gen. No. 71-151 (decided under former Code 1933, § 34-632 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Residence of member of armed forces. — A person who is a member of the armed forces does not acquire residence in this state merely because the person is stationed here. A member of the armed forces stationed in this state, who acquires a domicile here, without any present intention of removing therefrom, and to which, whenever the individual is absent, the individual intends to return, would acquire residence in this state. 1968 Op. Att'y Gen. No. 68-68 (decided under former Code 1933, § 34-632 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

United States Navy personnel living offshore in a submarine while stationed at an armed forces base in Georgia may establish residence in a certain county only if they fix their place of habitation at that location, without any present intention of removing therefrom, and with intent to return thereto. 1982 Op. Att'y Gen. No. 82-83 (decided under former Code Section 21-2-241 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Registration in another state by a serviceman stationed in such state for a special election wherein nonresidents of the category are permitted to register and vote under the laws of such state would not necessarily void registration in Georgia. 1970 Op. Att'y Gen. No. U70-103 (decided under former Code 1933, § 34-632 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Business address insufficient for residency purposes. — A business address, in and of itself, does not fulfill the residency requirements of the Election Code, and an otherwise qualified elector may vote in the election district (now precinct) containing the business address only when such district (now precinct) also contains the elector's residence as defined by the Election Code. 1968 Op.

Att'y Gen. No. 68-293 (decided under former Code 1933, § 34-632 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, § 159 et seq.

C.J.S.

29 C.J.S., Elections, § 36 et seq.

ALR.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration, 76 A.L.R. 1238.

Voting by persons in the military service, 155 A.L.R. 1459.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office, 39 A.L.R.3d 303.

Validity of residency and precinct-specific requirements of state voter registration statutes, 57 A.L.R.6th 419.

21-2-218. Cancellation of registration in former state or county; address changes and corrections.

(a) Any person, who is registered to vote in another state and who moves such person's residence from that state to this state, shall, at the time of making application to register to vote in this state, provide such information as specified by the Secretary of State in order to notify such person's former voting jurisdiction of the person's application to register to vote in this state and to cancel such person's registration in the former place of residence.

(b) Any person, who is registered to vote in another county or municipality in this state and who moves such person's residence from that county or municipality to another county or municipality in this state, shall, at the time of making application to register to vote in that county or municipality, provide such information as specified by the Secretary of State in order to notify such person's former voting jurisdiction of the person's application to register to vote in the new place of residence and to cancel such person's registration in the former place of residence.

(c) In the event that an elector moves to a residence within the county or municipality and has a different address from the address contained on the person's registration card, it shall be the duty of such elector to notify the board of registrars of such fact by the fifth Monday prior to the primary or election in which such elector wishes to vote by submitting the change of address in writing. The board of registrars shall then correct the elector's record to reflect the change of address and place the elector in the proper precinct and voting districts. The board of registrars may accept a properly submitted application for an absentee ballot for this purpose for electors who move to an address within the county or municipality which is different from the address contained on the person's registration card. The board of registrars may

also accept a properly submitted application for an absentee ballot to correct an elector's name on the voter registration list if all necessary information to complete such a change is included with the application.

(d) In the event that an elector moves to a residence within the county or municipality but into a different precinct or who moves to a residence in the same precinct but at a different address and fails to notify the board of registrars of such fact by the fifth Monday prior to an election or primary such elector shall vote in the precinct of such elector's former residence for such election or primary and for any runoffs resulting therefrom. The superintendent of an election shall make available at each polling place forms furnished by the Secretary of State which shall be completed by each such elector to reflect such elector's present legal residence. Such forms may also be used to notify the board of registrars of a change in an elector's name. The board of registrars shall thereafter place the elector in the proper precinct and voting districts and correct the list of electors accordingly. If the elector is placed in a precinct other than the one in which such elector has previously been voting, such elector shall be notified of the new polling place by first-class mail.

(e) Any provision of this chapter to the contrary notwithstanding, an elector who moves from one county or municipality to another after the fifth Monday prior to a primary or election may vote in the county or municipality or precinct in which such elector is registered to vote.

(f) No person shall vote in any county or municipality other than the county or municipality of such person's residence except as provided in subsection (e) of this Code section.

(g) In the event that the registration records incorrectly indicate that an elector has moved from an address within a precinct, the elector may vote in the precinct upon affirming in writing on a form prescribed by the Secretary of State that the elector still resides in the precinct at the address previously provided to the board of registrars. The registrars shall correct the elector's registration record to reflect the correct address.

(h) If a voter registration application is completed at a polling place for the purpose of recording a change of address and the new address is outside the county, then the registrar shall forward the application to the registrar in the new county of residence.

History.

Code 1981, § 21-2-218, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 7; Ga. L. 2012, p. 995, § 13/SB 92.

Administrative rules and regulations.

Rules and regulations for voter registration by registrars and deputy registrars, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.03.

Ballot secrecy, Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 71, former Code 1933, §§ 34-602 and 34-631 are included in the annotations for this Code section.

Length of residence not condition for registration. — Georgia may require its voters to be bona fide residents, but it may not require any length of residence as a condition to registering to vote. Abbott v. Carter, 356 F. Supp. 280, 1972 U.S. Dist. LEXIS 14294 (N.D. Ga. 1972) (decided under former Code 1933, § 34-602 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Proof of residence outside precinct does not establish ineligibility. — Since it is possible for an elector to be eligible to vote in an election district (now precinct) even though no longer residing there, a showing that the absentee ballot oath bears a residence address outside the election district (now precinct) does not establish that the elector was ineligible to vote in the election district (now precinct). Walls v. Garrett, 247 Ga. 640, 277 S.E.2d 903, 1981 Ga. LEXIS 783 (1981) (decided under former Code 1933, § 34-631 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Failure to apply to registrars upon moving to new county. — One who had moved from another county to that wherein an election was held, and, by application to the tax-collector of the latter county, had one's name transferred and entered upon the voters' book of that county, but at no time made any application to the registrars thereof for such transfer, and had offered no proof before them as to qualifications to vote, was not qualified to vote in a bond election. Turk v. Royal, 34 Ga. App. 717, 131 S.E. 119, 1925 Ga. App. LEXIS 513 (1925) (decided under former Code 1910, § 71).

Change of residence more than 30 days prior to election. — An elector may not vote in a legislative district (now precinct) when the elector has changed residence from that district (now precinct) more than 30 days prior to the primary or election. Taggart v. Phillips, 242 Ga. 484, 249 S.E.2d 268, 1978 Ga. LEXIS 1261 (1978) (decided under former Code 1933, § 34-631 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Standing to bring action under the National Voter Registration Act. — Voter who had recently moved suffered a concrete and actual injury by the refusal by the Georgia Secretary of State to accept the voter's voter registration containing the voter's new address, thereby preventing the voter from voting in the voter's new precinct. Charles H. Wesley Educ. Found., Inc. v. Cox, 324 F. Supp. 2d 1358, 2004 U.S. Dist. LEXIS 12120 (N.D. Ga. 2004), aff'd, 408 F.3d 1349, 2005 U.S. App. LEXIS 8320 (11th Cir. 2005).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-631 and 34-804 are included in the annotations for this Code section.

One who moves away from a county and makes a home elsewhere forfeits one's right to vote in that county. 1965-66 Op. Att'y Gen. No. 65-56 (decided under former Code 1933, §§ 34-631 and 34-804 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Duty to make changes in records. — The board of registrars has the right and duty to make changes in its records if it learns from voters' certificates of changes of names or addresses of voters. 1970 Op.

Att'y Gen. No. U70-12 (decided under former Code 1933, §§ 34-631 and 34-804 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, §§ 159 et seq., 179 et seq.

C.J.S.
29 C.J.S., Elections, §§ 36, 38, 39, 40, 41, 66 et seq., 75 et seq.

21-2-219. Registration cards; form; registration by members of armed forces or merchant marine and permanent overseas citizen; Secretary of State to provide information regarding registration and absentee ballot procedures; reports regarding absentee ballots.

(a) The registration cards for use by persons in making application to register to vote shall be in a form as specified by the Secretary of State, which shall include printed forms, forms made available through electronic means, or otherwise. Except as provided in subsection (b) of this Code section and Code Section 21-2-221.2, only registration cards issued or authorized for use by the Secretary of State or the national voter registration card promulgated under the provisions of the National Voter Registration Act of 1993, 52 U.S.C. Section 20508, shall be accepted for purposes of voter registration.

(b) A person who is a legal resident of this state and a citizen of the United States; who is a member of the armed forces of the United States or the merchant marine, is a spouse or dependent of a member of the armed forces or the merchant marine residing with or accompanying said member, or is temporarily or permanently residing overseas; and who will be absent from such person's county of residence until after the time for registering for an ensuing primary or election may make proper application for voter registration on the official post card or write-in absentee ballot provided for by the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended.

(c) Permanent overseas citizens shall only be authorized to vote for presidential electors and United States senator or representative in Congress. Permanent overseas citizens shall be deemed to be residents of the precinct in which the county courthouse is located.

(d) A properly executed registration card submitted under the provisions of subsection (b) of this Code section shall be considered to be an application for an absentee ballot under Code Section 21-2-381 or a special absentee ballot under Code Section 21-2-381.1, as appropriate.

(e) A person who is a United States citizen, permanently residing overseas, who has never lived in the United States, may register and

vote in this state in the county of residence of either of such person's parents under the limitations of subsection (c) of this Code section if either of the person's parents is registered to vote in this state. Such person shall be deemed to reside at the same location as the parent for voting purposes.

(f) The office of the Secretary of State is designated as the office, under the federal Help America Vote Act, to be responsible for providing information on registration and absentee ballot procedures for use by absent uniformed services and overseas voters, including the use of the federal write-in absentee ballot.

(g) The registrars of each county shall report to the Secretary of State within 60 days after a general election in which federal candidates were on the ballot the combined number of absentee ballots transmitted to absent uniformed services and overseas voters in such election and the combined number of such ballots that were returned by such voters and cast in such election.

(h) The Secretary of State shall within 90 days after a general election in which federal candidates were on the ballot report to the federal Election Assistance Commission, on such form as may be prescribed by such commission, the combined number of absentee ballots transmitted to absent uniformed services and overseas voters in such election and the combined number of such ballots that were returned by such voters and cast in such election.

History.

Code 1981, § 21-2-219, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 15; Ga. L. 2003, p. 517, § 17; Ga. L. 2010, p. 569, § 1/HB 1073; Ga. L. 2010, p. 914, § 8/HB 540; Ga. L. 2012, p. 995, § 14/SB 92.

U.S. Code.

The Help America Vote Act of 2002, referred to in this Code section, is codified at 52 U.S.C. § 20901 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, "52 U.S.C. Section 20508" was substituted for "42 U.S.C. Section 1973gg-7" in subsection (a), and, in subsection (b), "52 U.S.C. Section 20301" was substituted for "42 U.S.C. Section 1973ff".

JUDICIAL DECISIONS

Compliance with federal Privacy Act. — Georgia's voter registration forms do not comply with the notice requirements of § 7(b) of the Privacy Act, 5 U.S.C. § 552a, because the form requires an applicant to disclose his or her social security number. Schwier v. Cox, 412 F. Supp. 2d 1266, 2005 U.S. Dist. LEXIS 40002 (N.D. Ga. 2005), aff'd, 439 F.3d 1285, 2006 U.S. App. LEXIS 3656 (11th Cir. 2006).

21-2-220. Application for registration; identification requirement; rejection for failure to provide required information or for submission of false information; aid to disabled or illiterate.

(a) Any person desiring to register as an elector shall apply to do so by making application to a registrar or deputy registrar of such person's county of residence in person, by submission of the federal post card application form as authorized under Code Section 21-2-219, by making application through the Department of Driver Services as provided in Code Section 21-2-221, by making application through the Department of Natural Resources as provided in Code Section 21-2-221.1, by making application online as provided in Code Section 21-2-221.2, by making application through designated offices as provided in Code Section 21-2-222, or by making application by mail as provided in Code Section 21-2-223.

(b) Notwithstanding any other provision of this title, whenever a person makes application to register in person or through the means specified in this Code section, the person authorized to offer registration shall inquire as to whether the individual seeking registration is a citizen of the United States, and the person offering registration shall not be required to offer registration to an individual who answers such inquiry with a negative response.

(c) Except as otherwise provided in this subsection, electors who register to vote for the first time in this state by mail must present current and valid identification either when registering to vote by mail or when voting for the first time after registering to vote by mail. The current and valid identification shall be one or more of those forms of identification provided in subsection (c) of Code Section 21-2-417 or a legible copy thereof. The registrars shall make copies of any original forms of identification submitted by applicants and return the originals to the applicants. The requirement to submit identification shall not apply to:

(1) Persons who submit identifying information with their applications that the registrars are able to match to information contained on a state data base available to such registrars containing the same number, name, and date of birth as contained in the application;

(2) Persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq.; or

(3) Persons who are entitled to vote otherwise than in person under any other federal law.

(d) If an applicant fails to provide all of the required information on the application for voter registration with the exception of current and

valid identification, the board of registrars shall notify the registrant in writing of the missing information. The board of registrars shall not determine the eligibility of the applicant until and unless all required information is supplied by the applicant. If the initial application is received prior to the close of voter registration prior to an election, if the applicant supplies the necessary information on or prior to the date of the election, and if the applicant is found eligible to vote, the applicant shall be added to the list of electors and shall be permitted to vote in the election and any run-off elections resulting therefrom and subsequent elections; provided, however, that voters who registered to vote for the first time in this state by mail must supply current and valid identification when voting for the first time as required in subsection (c) of this Code section. In the event the elector does not respond to the request for the missing information within 30 days, the application shall be rejected.

(e) If an applicant submits false information, the board of registrars shall reject the application and shall refer the application to the district attorney of the county for criminal prosecution. If the false information is not discovered until after the applicant's application has been approved and the applicant's name added to the list of electors, the giving of such false information shall be cause to challenge the applicant's right to remain on the list of electors, which, if sustained, shall result in such applicant's name being removed from the list and the application being submitted to the district attorney of the county for criminal prosecution.

(f) A person registering to vote who is disabled or illiterate may request assistance from any other person in completing the form for registration, but the person offering assistance shall sign the voter registration form in the space provided to identify the person offering assistance.

(g) The registrars shall note on their records and the electors list any elector who registers by mail for the first time in this state and does not provide the identification required by subsection (c) of this Code section.

History.

Code 1981, § 21-2-220, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 5, 29; Ga. L. 2001, p. 240, § 16; Ga. L. 2003, p. 517, § 18; Ga. L. 2004, p. 732, § 1; Ga. L. 2005, p. 253, § 24/HB 244; Ga. L. 2005, p. 334, § 10-1/HB 501; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2012, p. 995, § 15/SB 92.

Cross references.

Handicapped persons, T. 30.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, "52 U.S.C. Section 20301" was substituted for "42 U.S.C. Section 1973ff" in paragraph (c)(2).

JUDICIAL DECISIONS

Compliance with federal Privacy Act. — Georgia's voter registration forms do not comply with the notice requirements of § 7(b) of the Privacy Act, 5 U.S.C. § 552a, because the form requires an applicant to disclose his or her social security number. Schwier v. Cox, 412 F. Supp. 2d 1266, 2005 U.S. Dist. LEXIS 40002 (N.D. Ga. 2005), aff'd, 439 F.3d 1285, 2006 U.S. App. LEXIS 3656 (11th Cir. 2006).

OPINIONS OF THE ATTORNEY GENERAL

Digitized signature system not authorized. — Express statutory authorization must be obtained before a system allowing for use of an applicant's digitized, rather than original, signature may be implemented. 1996 Op. Att'y Gen. No. 96-2.

21-2-220.1. Required documentation for voter registration.

(a) Any person applying to register to vote shall provide his or her Georgia driver's license number or identification card number for an identification card issued pursuant to Article 5 of Chapter 5 of Title 40 on the voter registration application. If a person does not have a Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, such person shall provide the last four digits of his or her social security number on the voter registration application. If a person does not have a Georgia driver's license, a Georgia identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or a social security number, the person shall affirm this fact in the manner prescribed in the voter registration application upon penalty of law and such application shall be processed without regard to the procedures outlined in subsections (b), (c), and (d) of this Code section.

(b) In the event that the name, driver's license number, social security number, or date of birth provided by the person registering to vote on the voter registration form does not match information about the applicant on file at the Department of Driver Services or the federal Social Security Administration, the applicant shall nevertheless be registered to vote but shall be required to produce proof of his or her identity to a county registrar, a deputy county registrar, a poll manager, or a poll worker at or before the time that such applicant requests a ballot for the first time in any federal, state, or local election.

(c) Proof of the applicant's identity as set forth in subsection (b) of this Code section shall be the forms of identification listed in subsection (c) of Code Section 21-2-417.

History.
Code 1981, § 21-2-220.1, enacted by Ga. L. 2017, p. 697, § 8/HB 268; Ga. L. 2019, p. 7, § 6/HB 316.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

21-2-221. Driver's license or identification card application as application for voter registration.

(a) Each application to obtain, renew, or change the name or address on a driver's license or identification card issued by the Department of Driver Services pursuant to Chapter 5 of Title 40 made by an applicant who is within six months of such applicant's eighteenth birthday or older shall also serve as an application for voter registration unless the applicant declines to register to vote through specific declination or by failing to sign the voter registration application.

(b) The commissioner of driver services and the Secretary of State shall agree upon and design such procedures and forms as will be necessary to comply with this Code section.

(c) The forms designed by the commissioner of driver services and the Secretary of State:

(1) Shall not require the applicant to duplicate any information required in the driver's license portion of the application with the exception of a second signature;

(2) Shall include such information as required on other voter registration cards issued by the Secretary of State;

(3) Shall contain a statement that states each eligibility requirement contained in Code Section 21-2-216, that contains an attestation that the applicant meets each such requirement, and that requires the signature of the applicant under penalty of perjury; and

(4) Shall include, in print that is identical to that used in the attestation, the penalties provided by law for submission of a false voter registration application; and a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(d) Any change of address submitted to the Department of Driver Services for the purpose of changing the information contained on a driver's license or identification card issued by the Department of Driver Services shall serve as a notification of change of address for voter registration unless the registrant states that at the time of submitting the change of address that the change of address is not for voter registration purposes.

(e) The Department of Driver Services shall transmit the completed applications for voter registration to the Secretary of State at the conclusion of each business day. The Secretary of State shall forward the applications to the appropriate county board of registrars to determine the eligibility of the applicant and, if found eligible, to add

the applicant's name to the list of electors and to place the applicant in the correct precinct and voting districts.

(f) The Department of Driver Services shall maintain such statistical records on the number of registrations and declinations as requested by the Secretary of State.

(g) No information relating to the failure of an applicant for a driver's license or identification card issued by the Department of Driver Services to sign a voter registration application may be used for any purpose other than voter registration.

(h) The Secretary of State and the commissioner of driver services shall have the authority to promulgate rules and regulations to provide for the transmission of voter registration applications and signatures electronically. Such electronically transmitted signatures shall be valid as signatures on the voter registration application and shall be treated in all respects as a manually written original signature and shall be recognized as such in any matter concerning the voter registration application.

History.
Code 1981, § 21-2-221, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 6; Ga. L. 1998, p. 295, § 1; Ga. L. 2002, p. 437, § 1; Ga. L. 2005, p. 334, § 10-2/HB 501.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-107, 34-108 and 34-612 and Code Section 21-2-221 are included in the annotations for this Code section.

County board of registrars is the proper agency to determine eligibility to register and vote. 1970 Op. Att'y Gen. No. U70-103 (decided under former Code 1933, §§ 34-107, 34-108, and 34-612 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Oath may be administered in mass. — Persons authorized to register voters pursuant to O.C.G.A. § 21-2-212(c) may, after the registration cards have been completed by the applicants, administer the oath to all applicants at the same time and then obtain the required signatures individually. 1983 Op. Att'y Gen. No. 83-42 (decided under former Code Section 21-2-221 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Failure to sign voter's registration card. — Where a voter's registration card has not been signed by the voter, such person is not a registered voter and it actually is a misnomer to refer to the person as a "voter." 1968 Op. Att'y Gen. No. 68-145 (decided under former Code 1933, §§ 34-107, 34-108 and 34-612 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 180 et seq.
C.J.S.
29 C.J.S., Elections, §§ 70, 73.
ALR.
Voter identification requirements as denying or abridging right to vote on account of race or color under § 2 of Voting Rights

Act, 52 U.S.C.A. § 10301, 12 A.L.R. Fed. 3d 4.

21-2-221.1. Voter registration incorporated into resident hunting, fishing, or trapping license; design of forms; record keeping; opting out by businesses selling alcohol for on-premises consumption.

(a) Each application to obtain a resident hunting, fishing, or trapping license issued by the Department of Natural Resources pursuant to Chapter 2 of Title 27 and made by an applicant who is within six months of such applicant's eighteenth birthday or older shall also serve as an application for voter registration unless the applicant declines to register to vote through specific declination or by failing to sign the voter registration application.

(b) The Board of Natural Resources and the Secretary of State shall agree upon and design such procedures and forms as will be necessary to comply with this Code section, including without limitation procedures applicable to processing of applications received by persons approved as license agents for the Department of Natural Resources pursuant to Code Section 27-2-2.

(c) The forms designed by the Board of Natural Resources and the Secretary of State:

(1) Shall not require the applicant to duplicate any information required in the resident hunting, fishing, or trapping license portion of the application with the exception of a second signature;

(2) Shall include such information as required on other voter registration cards issued by the Secretary of State;

(3) Shall contain a statement that states each eligibility requirement contained in Code Section 21-2-216, that contains an attestation that the applicant meets each such requirement, and that requires the signature of the applicant under penalty of false swearing; and

(4) Shall include, in print that is identical to that used in the attestation, the penalties provided by law for submission of a false voter registration application; and a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(d) Any person when acting as a license agent for the Department of Natural Resources shall not:

(1) Seek to influence an applicant's political preference;

(2) Display on his or her person any such political preference or political party or body allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from applying to register to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to apply to register or not to apply to register to vote has any bearing on the availability of services or benefits.

(e) License agents for the Department of Natural Resources acting under this Code section shall not be considered to be deputy registrars under this chapter or any rules and regulations promulgated thereunder.

(f) The Department of Natural Resources shall transmit the completed applications for voter registration to the Secretary of State at the conclusion of each business day. The Secretary of State shall forward the applications to the appropriate county board of registrars to determine the eligibility of the applicant and, if found eligible, to add the applicant's name to the list of electors and to place the applicant in the correct precinct and voting districts.

(g) The Department of Natural Resources shall maintain such statistical records on the number of registrations and declinations as requested by the Secretary of State.

(h) Information relating to the failure of an applicant for a resident hunting, fishing, or trapping license issued by the Department of Natural Resources to sign a voter registration application shall not be used for any purpose other than voter registration and shall not be subject to public inspection.

(i) The Secretary of State and the Board of Natural Resources shall have the authority to promulgate rules and regulations to provide for the transmission of voter registration applications and signatures electronically. Such electronically transmitted signatures shall be valid as signatures on the voter registration application and shall be treated in all respects as a manually written original signature and shall be recognized as such in any matter concerning the voter registration application.

(j) The forms and procedures to implement and administer this Code section shall be designed in a manner such that license agents for the Department of Natural Resources shall not incur any expenses nor be required to make any reports in implementing and administering this Code section in addition to those presently required of such license agents in issuing fishing, hunting, and trapping licenses, other than

providing information to the Department of Natural Resources at the time the license application is processed necessary to comply with state and federal voter laws on voter registration.

(k) License agents for the Department of Natural Resources acting under this Code section whose businesses are authorized to sell alcoholic beverages for on-premises consumption may notify the Department of Natural Resources of their desire to opt out of the requirements of this Code section and shall thereafter not be required to comply with this Code section.

History.
Code 1981, § 21-2-221.1, enacted by Ga. L. 2004, p. 732, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 173 et seq.

C.J.S.
29 C.J.S., Elections, § 55 et seq.

21-2-221.2. Voter registration application for electronic voter registration.

(a) A person who is qualified to register to vote in this state and who has a valid Georgia driver's license or identification card may submit a voter registration application on the Internet website of the Secretary of State. The Secretary of State shall, in conjunction with the Department of Driver Services, design and implement a system to allow for such electronic voter registration.

(b) An application submitted pursuant to this Code section shall contain:

(1) The applicant's name and residence address;

(2) The applicant's driver's license or identification card number;

(3) The applicant's date of birth;

(4) An affirmation by the applicant that the applicant is a citizen of the State of Georgia and of the United States;

(5) An affirmation by the applicant that the information provided is truthful and that the applicant is eligible to vote in the State of Georgia;

(6) An assent by the applicant to the use of his or her signature from his or her driver's license or identification card; and

(7) Such other information the Secretary of State deems necessary to establish the identity of the applicant.

(c) Upon the submission of an application through the website

pursuant to this Code section, the software used by the Secretary of State for processing applications through the website shall provide for immediate verification of all of the following:

(1) That the applicant has a valid Georgia driver's license or identification card and that the number for that driver's license or identification card provided by the applicant matches the number for the applicant's driver's license or identification card that is on file with the Department of Driver Services;

(2) That the date of birth provided by the applicant matches the date of birth that is on file with the Department of Driver Services; and

(3) That the applicant is a citizen of the State of Georgia and of the United States and that the information provided by the applicant matches the information on file with the Department of Driver Services.

If any of these items do not match or if the application is incomplete, the application shall be void and shall be rejected and the applicant shall be notified of such rejection either electronically or by mail within five days after such application is rejected.

(d) If all of the items enumerated in subsection (c) of this Code section are verified, the Secretary of State shall obtain an electronic copy of the applicant's signature from the applicant's driver's license or identification card on file with the Department of Driver Services. The application shall then be processed in the same manner as applications under Code Section 21-2-221. Except as otherwise provided by this Code section, the application shall be deemed to have been made as of the date that the information was provided by the applicant through the Internet website.

(e) The matching of information pursuant to subsection (c) of this Code section shall satisfy the requirements of subsection (g) of Code Section 21-2-216.

(f) The Secretary of State shall employ security measures to ensure the accuracy and integrity of voter registration applications submitted electronically pursuant to this Code section.

History.

Code 1981, § 21-2-221.2, enacted by Ga. L. 2012, p. 995, § 16/SB 92.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, "do" was substituted for "does" in the ending undesignated paragraph of subsection (c).

RESEARCH REFERENCES

ALR.

Voter identification requirements as denying or abridging right to vote on account of race or color under § 2 of Voting Rights Act, 52 U.S.C.A. § 10301, 12 A.L.R. Fed. 3d 4.

21-2-222. Designated voter registration agencies and offices; definitions; duties of agencies and offices.

(a) As used in this Code section, the term:

(1) "Persons with disabilities" means persons who have physical disabilities, including, but not limited to, any physical or neurological impairment which severely restricts a person's mobility or manual dexterity; substantial loss of speech, sight, or hearing; or loss of one or more limbs or use thereof; but such term shall not include nonphysical disabilities, mental or emotional disabilities, or disabilities based upon substance abuse.

(2) "Public assistance" means the food stamp program; the Medicaid program; the Women, Infants, and Children program; and the Temporary Assistance for Needy Families program.

(3) "Recruitment office of the armed forces of the United States" includes both regular and reserve forces recruitment offices and national guard recruitment offices.

(b) Each office in this state:

(1) Which provides public assistance;

(2) Which provides state funded programs primarily engaged in providing services to persons with disabilities; and

(3) Which is a recruitment office of the armed forces of the United States located within this state

shall be designated voter registration agencies.

(c) In addition to the offices listed in subsection (b) of this Code section, the Secretary of State shall designate other offices within the state as designated voter registration offices. Such offices may include, but not be limited to:

(1) State or local governmental offices such as public libraries, public schools, offices of county and municipal clerks, and government revenue offices; and

(2) Federal and nongovernmental offices, with the agreement of such offices.

(d) At each designated voter registration agency, the following services shall be made available:

(1) Distribution of the mail voter registration application provided for in Code Section 21-2-223 in accordance with subsection (f) of this Code section;

(2) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance; and

(3) Acceptance of completed voter registration application forms for submission to the Secretary of State.

(e) If a designated voter registration agency under paragraph (2) of subsection (b) of this Code section provides services to a person with a disability at the person's home, the agency shall provide the services described in subsection (d) of this Code section at such person's home.

(f) A designated voter registration agency that provides service or assistance in addition to conducting voter registration shall:

(1) Distribute with each application for such service or assistance and with each recertification, renewal, or change of address form relating to such service or assistance, when such application, recertification, renewal, or change of address is made in person, the mail voter registration application form provided for in Code Section 21-2-223 unless the applicant declines in writing to register to vote;

(2) Distribute a form provided by the Secretary of State to accompany the voter registration application form which includes:

(A) The question "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(B) If the agency provides public assistance, the statement "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(C) Boxes for the applicant to check to indicate whether the applicant is presently registered, would like to register, or declines to register to vote with the statement "IF YOU DO NOT CHECK ANY BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME." in close proximity to the boxes and in prominent type;

(D) The statements "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application in private."; and

(E) The statement "If you believe that someone has interfered with your right to register or to decline to register to vote or your right to privacy in deciding whether to register or in applying to

register to vote, you may file a complaint with the Secretary of State at (insert address and telephone number).”; and

(3) Provide to each applicant who does not decline to apply to register to vote the same degree of assistance with regard to the completion of the voter registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(g) If an applicant fails to check any box on the form required by subparagraph (f)(2)(C) of this Code section, the applicant shall be deemed to have declined to apply to register to vote.

(h) No information relating to a declination to apply to register to vote in connection with an application made at an office described in subsection (f) of this Code section may be used for any purpose other than voter registration and shall not be subject to public inspection.

(i) Each office shall transmit the completed voter registration application forms to the Secretary of State at least once per week, except that, during the 15 days leading up to a registration deadline for a primary or election, such applications shall be transmitted to the Secretary of State at the conclusion of each business day. The Secretary of State shall forward the applications to the appropriate county board of registrars to determine the eligibility of the applicant and, if found eligible, to add the applicant's name to the list of electors and to place the applicant in the correct precinct and voting districts.

(j) Each office shall maintain such statistical records on the number of registrations and declinations as requested by the Secretary of State.

(k) Persons providing the services described in subsection (d) of this Code section shall not:

(1) Seek to influence an applicant's political preference;

(2) Display any such political preference or political party or body allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from applying to register to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to apply to register or not to apply to register to vote has any bearing on the availability of services or benefits.

(l) The Secretary of State shall have the authority to promulgate rules and regulations to provide for the transmission of voter registration applications and signatures electronically from public assistance

offices, offices which provide state funded programs primarily engaged in providing services to persons with disabilities, and recruitment offices of the armed forces of the United States located within this state. Such electronically transmitted signatures shall be valid as signatures on the voter registration application and shall be treated in all respects as a manually written original signature and shall be recognized as such in any matter concerning the voter registration application.

History.

Code 1981, § 21-2-222, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1997, p. 1021, § 7; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 17; Ga. L. 2003, p. 517, § 19.

Administrative rules and regulations.

Rules and regulations for voter registration by registrars and deputy registrars, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.03.

Registration of persons by college presidents or their designees, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.05.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 284 (1997).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-615 are included in the annotations for this Code section.

Relationship with the National Voter Registration Act of 1993. — There was no clear textual basis in the operative language of 42 U.S.C. § 1973gg-5(a)(6) (see now 52 U.S.C. § 20501 et seq.) for the proviso found in O.C.G.A. § 21-2-222(f), the Georgia statute implementing the National Voter Registration Act of 1993, which limited the application of the mandatory distribution of forms to only those instances when such application, recertification, renewal, or change of address was made in person. Ga. State Conf. of the NAACP v. Kemp, 841 F. Supp. 2d 1320, 2012 U.S. Dist. LEXIS 14326 (N.D. Ga. 2012).

Decision to deny the right of registration, though initially made by a registrar or deputy registrar, is to be finally made by the three registrars, and from their decision an appeal lies to the superior court. McCoy v. McLeroy, 348 F. Supp. 1034, 1972 U.S. Dist. LEXIS 11964 (M.D. Ga. 1972) (decided under former Code 1933, § 34-615 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, § 174 et seq.

C.J.S.

29 C.J.S., Elections, § 69.

21-2-223. Mail voter registration application forms.

(a) The Secretary of State shall design, publish, and distribute voter registration application forms with which a person may apply to register to vote by completing and mailing the form to the Secretary of State or to the board of registrars of the person's county of residence. The Secretary of State shall forward the applications that he or she receives to the appropriate county board of registrars to determine the

eligibility of the applicant and, if found eligible, to add the applicant's name to the list of electors and to place the applicant in the correct precinct and voting districts.

(b) The county boards of registrars shall obtain and maintain a supply of mail voter registration application forms for distribution and for voter registration. In addition, each state, county, and municipal office, except an office which is a designated voter registration office under Code Section 21-2-222, which has regular contact with the public shall obtain a supply of mail voter registration application forms from the Secretary of State and make such applications available for use by citizens to register to vote.

(c) The mail voter registration application forms shall be made available through governmental and private entities with particular emphasis on making such forms available for organized voter registration programs.

History.
Code 1981, § 21-2-223, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 9/HB 540.

JUDICIAL DECISIONS

Injunction was properly issued against officials who rejected voter registration forms. — Preliminary injunction was properly issued against state officials who had rejected voter registration forms that had been mailed to the Georgia Secretary of State because the plaintiffs were substantially likely to prevail in their suit and the public interest was served by the preservation of the applicants' voting rights because: (1) the Secretary of State had rejected the forms based upon the fact that they had been bundled and mailed in together, rather than individually; (2) state law had to comply with the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et seq. (see now 52 U.S.C. § 20501 et seq.); (3) the NVRA did not prohibit registration drives or prohibit third-party submission of individual voter registration forms and specifically required that states should register all voters that timely mailed in valid voter registration forms; and (4) Georgia's anti-bundling policy did little, if anything, to prevent fraud or assist in the assessment of voter eligibility. Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 2005 U.S. App. LEXIS 8320 (11th Cir. 2005).

Plaintiffs had standing to challenge rejection of voter registration forms which they mailed to the Georgia Secretary of State where: (1) the Secretary of State rejected the forms based upon the fact that the forms were bundled and mailed in together, rather than mailed individually; (2) the plaintiffs' claim, that the rejection of the forms violated their rights under the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq. (see now 52 U.S.C. § 20501 et seq.), was sufficient to allege a legal injury-in-fact that was fairly attributable to the conduct of the state officials that were sued in the suit; and (3) the plaintiffs did not have to show that their claims were valid or that they would prevail in the suit in order to have standing to assert their claims. Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 2005 U.S. App. LEXIS 8320 (11th Cir. 2005).

21-2-224. Registration deadlines; restrictions on voting in primaries; official list of electors; voting procedure when portion of county changed from one county to another.

(a) If any person whose name is not on the list of registered electors maintained by the Secretary of State under this article desires to vote at any general primary, general election, or presidential preference primary, such person shall make application as provided in this article by the close of business on the fifth Monday or, if such Monday is a legal holiday, by the close of business on the following business day prior to the date of such general primary, general election, or presidential preference primary.

(b) If any person whose name is not on the list of registered electors maintained by the Secretary of State under this article desires to vote at any special primary or special election, such person shall make application as provided in this article no later than either the close of business on the fifth day after the date of the call for the special primary or special election, excluding Saturdays, Sundays, and legal holidays of this state or the close of business on the fifth Monday prior to the date of the special primary or special election or, if such Monday is a legal holiday, by the close of business on the following business day, whichever is later; except that:

(1) If such special primary or special election is held in conjunction with a general primary, general election, or presidential preference primary, the registration deadline for such special primary or special election shall be the same as the registration deadline for the general primary, general election, or presidential preference primary in conjunction with which the special primary or special election is being conducted; or

(2) If such special primary or special election is not held in conjunction with a general primary, general election, or presidential preference primary but is held on one of the dates specified in Code Section 21-2-540 for the conduct of special elections to present a question to the voters or special primaries or elections to fill vacancies in elected county or municipal offices, the registration deadline for such a special primary or election shall be at the close of business on the fifth Monday prior to the date of the special primary or election or, if such Monday is a legal holiday, by the close of business on the following business day.

(c) Mail voter registration applications shall be deemed to have been made as of the date of the postmark affixed to such application by the United States Postal Service or, if no such postmark is affixed or if the postmark affixed by the United States Postal Service is illegible or

bears no date, such application shall be deemed to have been made timely if received through the United States mail by the Secretary of State no later than the close of business on the fourth Friday prior to a general primary, general election, presidential preference primary, or special primary or special election held in conjunction with a general primary, general election, or presidential preference primary or special primary or special election held on one of the dates specified in Code Section 21-2-540 for the conduct of special elections to present questions to the voters or special primaries or special elections to fill vacancies in elected county or municipal offices or no later than the close of business on the ninth day after the date of the call, excluding Saturdays, Sundays, and legal holidays of this state, for all other special primaries and special elections.

(c.1) An individual or organization shall promptly transmit all completed voter registration applications to the Secretary of State or the appropriate board of registrars within ten days after receiving such application or by the close of registration, whichever period is earlier. If an individual or organization receives a completed voter registration application 14 or fewer days before the close of registration, the individual or organization shall transmit the application to the Secretary of State or the appropriate board of registrars within 72 hours of the date of the execution of the application or by midnight on the close of registration, whichever period is earlier.

(d) Each elector who makes timely application for registration, is found eligible by the board of registrars and placed on the official list of electors, and is not subsequently found to be disqualified to vote shall be entitled to vote in any primary or election; provided, however, that an elector, voting in the primary or primaries held by a single party for the nomination of candidates to seek public offices to be filled in an election, shall not vote in a primary held by any other party for the nomination of candidates to seek public offices to be filled in the same such election.

(e) The county board of registrars shall deliver to the municipality, upon a basis mutually agreed upon between the county board of registrars and the governing authority of the municipality, a copy of the list of electors for the municipality for the primary or election. Such list shall be delivered not earlier than the fifth Monday prior to a primary or election and not later than 21 days prior to such primary or election for the purpose of permitting the municipality to check the accuracy of the list. The municipality shall, upon receipt of the county registration list, or as soon as practicable thereafter but in no event later than five days prior to such primary or election, review such list and identify in writing to the county board of registrars any names on the electors list of persons who are not qualified to vote at such primary or election, stating the reason for disqualification. The county board of registrars

shall challenge the persons identified in accordance with Code Section 21-2-228. In addition, the county board of registrars shall provide a list of inactive electors for the municipality. The municipality shall certify such lists and file with the city clerk a copy showing the names of electors entitled to vote at such primary or election.

(f) The official list of electors eligible to vote in any primary or election shall be prepared and completed at least five calendar days prior to the date of the primary or election in which the list is to be used.

(g) The official list of electors and the official list of inactive electors prepared and distributed to the poll officers of each precinct shall include only the elector's name, address, ZIP Code, date of birth, voter identification number, a designation of whether the elector registered for the first time in this state and is required to comply with Code Section 21-2-216, a designation of whether the elector registered for the first time in this state by mail and is required to comply with Code Sections 21-2-220 and 21-2-417, congressional district, state Senate district, state House district, county commission district, if any, county or independent board of education district, if any, and municipal governing authority district designations, if any, and such other voting districts, if any. The official list of electors and the official list of inactive electors prepared and distributed to the poll officers of each precinct may also include codes designating that an elector has voted by absentee ballot, has been challenged, or has been sent mail by the registrars which has been returned marked undeliverable. No person whose name does not appear on the official list of electors shall vote or be allowed to vote at any election, except as otherwise provided in this article. The county registrars shall ensure that the information required to notify poll officers that an elector registered to vote for the first time in this state by mail and must comply with subsection (c) of Code Section 21-2-220 and subsection (c) of Code Section 21-2-417 is placed on each list of electors to be used at a polling place.

(h) All persons whose names appear on the list of electors placed in the possession of the managers in each precinct and no others, except as otherwise provided in this article, shall be allowed to deposit their ballots according to law at the precinct in which they are registered.

(i) When any portion of a county or municipality is changed from one county or municipality to another, the persons who would have been qualified to vote in the county or municipality from which taken, at the time of any primary or election, shall vote in the county or municipality to which they are removed; and, if required to swear or certify, the oath or certification may be so qualified as to contain this fact. The name of such elector shall be kept and checked as provided in Code Section 21-2-228.

History.

Code 1981, § 21-2-224, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1995, p. 1027, § 5; Ga. L. 1995, p. 1044, § 1; Ga. L. 1996, p. 145, § 7; Ga. L. 1997, p. 590, § 21; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 151, § 1; Ga. L. 2003, p. 517, § 20; Ga. L. 2005, p. 253, § 25/HB 244; Ga. L. 2010, p. 914, § 10/HB 540; Ga. L. 2012, p. 995, § 17/SB 92; Ga. L. 2017, p. 697, § 9/HB 268.

Administrative rules and regulations.

Preparation for elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Primaries and Elections, § 183-1-12-.07.

Acceptance of voter registration applications, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.01.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-106 and 34-611 and former Code Section 21-2-220 are included in the annotations for this Code section.

Election Code controls over charter provisions. — When determining voter registration cut-off dates, the Election Code prevails over conflicting charter provisions. 1970 Op. Att'y Gen. No. U70-165 (decided under former Code 1933, §§ 34-106 and 34-611 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Party primaries. — This provision would preclude a person from voting in the Democratic primary for Governor and other offices listed on the ballot and then later voting in a Republican primary or run off for candidates for the same offices. 1982 Op. Att'y Gen. No. 82-53 (decided under former Code Section 21-2-220 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Right to vote in special primary or election. — If a special primary or election is called, voters who did not register or vote previously in a regular primary are still entitled to vote in the special primary or election provided they register to vote on the fifth day after the call of such special primary or election. 1982 Op. Att'y Gen. No. 82-53 (decided under former Code Section 21-2-220 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

If a special primary is held for the United States House of Representatives, a person is not bound to vote in the same political party's primary in which the person previously voted in the regular primary. 1982 Op. Att'y Gen. No. 82-53 (decided under former Code Section 21-2-220 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, § 177 et seq.

C.J.S.

29 C.J.S., Elections, § 66 et seq.

ALR.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration, 76 A.L.R. 1238.

Validity of statute limiting time period for voter registration, 56 A.L.R. 6th 523.

21-2-225. Restrictions on public inspection of applications for voter registration and data on electors; membership of Secretary of State in nongovernmental entity for purpose of improving voter registration systems.

(a) Neither the original applications for voter registration nor any

copies thereof shall be open for public inspection except upon order of a court of competent jurisdiction.

(b) Except as provided in Code Section 21-2-225.1, all data collected and maintained on electors whose names appear on the list of electors maintained by the Secretary of State pursuant to this article shall be available for public inspection with the exception of bank statements submitted pursuant to subsection (c) of Code Section 21-2-220 and subsection (c) of Code Section 21-2-417, the month and day of birth, the social security numbers, email addresses, and driver's license numbers of the electors, and the locations at which the electors applied to register to vote, which shall remain confidential and shall be used only for voter registration purposes; provided, however, that any and all information relating to the dates of birth, social security numbers, and driver's license numbers of electors may be made available to other agencies of this state, to agencies of other states and territories of the United States, and to agencies of the federal government if the agency is authorized to maintain such information and the information is used only to identify the elector on the receiving agency's data base and is not disseminated further and remains confidential. Information regarding an elector's year of birth shall be available for public inspection.

(c) It shall be the duty of the Secretary of State to furnish copies of such data as may be collected and maintained on electors whose names appear on the list of electors maintained by the Secretary of State pursuant to this article, within the limitations provided in this article, on electronic media or computer run list or both. Notwithstanding any other provision of law to the contrary, the Secretary of State shall establish the cost to be charged for such data. The Secretary of State may contract with private vendors to make such data available in accordance with this subsection. Such data may not be used by any person for commercial purposes.

(d)(1) The Secretary of State may become a member of a nongovernmental entity whose purpose is to share and exchange information in order to improve the accuracy and efficiency of voter registration systems. The membership of the nongovernmental entity shall be composed solely of election officials of state and territorial governments of the United States, except that such membership may also include election officials of the District of Columbia.

(2) Notwithstanding any provision of law to the contrary, the Secretary of State may share confidential and exempt information after becoming a member of such nongovernmental entity as provided in paragraph (1) of this subsection.

(3) The Secretary of State may become a member of such nongovernmental entity only if such entity is controlled and operated by the

participating jurisdictions. The entity shall not be operated or controlled by the federal government or any other entity acting on behalf of the federal government. The Secretary of State must be able to withdraw at any time from any such membership in such nongovernmental entity.

(4) If the Secretary of State becomes a member of such nongovernmental entity, the Department of Driver Services shall, pursuant to an agreement with the Secretary of State, provide driver's license or identification card information related to voter eligibility to the Secretary of State for the purpose of sharing and exchanging voter registration information with such nongovernmental entity.

(5) Notwithstanding any law to the contrary, upon the Secretary of State becoming a member of a nongovernmental entity as provided in this subsection, information received by the Secretary of State from the nongovernmental entity is exempt from disclosure under Article 4 of Chapter 18 of Title 50 and any other provision of law. However, the Secretary of State may provide such information to the boards of registrars to conduct voter registration list maintenance activities.

History.

Code 1981, § 21-2-225, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1995, p. 1027, § 6; Ga. L. 1996, p. 145, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 21; Ga. L. 2004, p. 103, § 1; Ga. L. 2005, p. 253, § 26/HB 244; Ga. L. 2008, p. 781, § 8/HB 1112; Ga. L. 2009, p. 316, § 1/HB 227; Ga. L. 2010, p. 914, § 11/HB 540; Ga. L. 2011, p. 590, § 1/HB 143; Ga. L. 2011, p. 683, § 7/SB 82; Ga. L. 2019, p. 7, § 7/HB 316; Ga. L. 2023, p. 730, § 2(3)/HB 475, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in the first sentence of subsection (b).

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 58 are included in the annotations for this Code section.

Voter list correct but official proceeded in irregular manner. — Where an ordinary (now judge of the probate court) made up the list of qualified voters in an irregular manner, the mere fact that the ordinary may have proceeded in an irregular manner would not operate to vitiate the election, where it does not also appear that the list as certified and furnished to the ordinary was in fact incorrect. Powell v. Consolidated Sch. Dist. No. 1, 26 Ga. App. 135, 105 S.E. 616, 1921 Ga. App. LEXIS 26 (1921) (decided under former Code 1910, § 58).

Compliance with federal Privacy Act. — Georgia's voter registration forms do not comply with the notice requirements of § 7(b) of the Privacy Act, 5 U.S.C. § 552a, because the form requires an applicant to disclose his or her social security number. Schwier v. Cox, 412 F. Supp. 2d 1266, 2005 U.S. Dist. LEXIS 40002 (N.D. Ga. 2005), aff'd, 439 F.3d 1285, 2006 U.S. App. LEXIS 3656 (11th Cir. 2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-401, 34-402, 34-404, 34-622, and 34-623 and former Code Sections 21-2-233 and 21-2-234 are included in the annotations for this Code section.

Responsibility to prepare all electors lists. — The county board of registrars has both the authority and the responsibility to prepare all lists of electors used within the county to include those for the election of county commissioners. 1979 Op. Att'y Gen. No. U79-23 (decided under former Code 1933, §§ 34-401, 34-402, and 34-622 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Withholding of name because of change of residence. — A name may not be withheld from the list of registered voters because of a change of residence unless the board of registrars is convinced by sufficient proof of a change of legal residence. 1945-47 Ga. Op. Att'y Gen. 275 (decided under former Code 1933, § 34-401).

Access to additional information on electors. — The names, addresses and ZIP codes of electors must be furnished upon request for the fees set forth in former § 21-2-234. Any additional identifying information as may be collected and maintained must be made available for inspection and copying and a reasonable fee may be charged for expenses incurred or copies furnished. 1984 Op. Att'y Gen. No. 84-39 (decided under former Code Section 21-2-234 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Any citizen has a right to acquire the list of electors, with whatever other information they so desire from local boards of registrars or from the Secretary of State's office without prior official restraint. 1989 Op. Att'y Gen. No. 89-13 (decided under former Code Section 21-2-234 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

The term "commercial purposes" in former § 21-2-234(c) was to be given its customary meaning and refers generally to the manufacture, transportation, traffic, and sale of goods, merchandise, and services of all kind. 1989 Op. Att'y Gen. No. 89-13 (decided under former Code Section 21-2-234 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 179.

C.J.S.
29 C.J.S., Elections, § 75 et seq.

ALR.
Nonregistration as affecting legality of votes cast by persons otherwise qualified, 101 A.L.R. 657.

21-2-225.1. Confidentiality of address of registered electors; term of request; procedure.

(a) Any registered elector in this state who has obtained a protective order under Code Section 19-13-4 or under a similar provision of law in another state or who has obtained a restraining order or protective order under Code Section 16-5-94 or under a similar provision of law in another state may request the board of registrars of such elector's county of residence to make such elector's residence address confidential. An elector who is a bona fide resident of a family violence shelter, as defined in Code Section 19-13-20, may request to have his or her address made confidential without having to obtain a restraining order or protective order.

(b) Upon the filing of a request with an affidavit under oath with the board of registrars by a registered elector stating that the elector has obtained a protective order under Code Section 19-13-4 or similar provision of law from another state or a restraining order or protective order under Code Section 16-5-94 or a similar provision of law of another state or, if the elector is a resident of a family violence shelter, a certification by the operators of such family violence shelter that such elector is a bona fide resident of such shelter, the registrars shall immediately review such request and supporting documents and, if such request and documentation is sufficient, shall approve the request and immediately take such steps as necessary to make the residence address of the elector confidential.

(c) A request under this Code section, once approved, shall be effective for a period of four years following its approval by the registrars and may be renewed for additional four-year periods by the filing of a new request with the supporting documentation required by subsection (b) of this Code section prior to the end of each four-year period. If the elector registers to vote in another county in this state or another state, a new request for confidentiality of the elector's residence address with the supporting documentation required in subsection (b) of this Code section shall be filed with the new county in order to continue the confidentiality of the elector's residence address or the confidentiality shall terminate.

(d) The Secretary of State shall provide by procedure, rule, or regulation for the mechanism by which such information shall be made confidential on the voter registration data base and may provide for forms for use in making such requests and for the use of alternate addresses for electors who file requests for the confidentiality of their residence addresses.

(e) Information made confidential pursuant to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50.

History.
Code 1981, § 21-2-225.1, enacted by Ga. L. 2009, p. 316, § 2/HB 227.

21-2-226. Duties of county board in determining eligibility of voters; maps of municipal boundaries; notice of ineligibility; issuance of registration cards; reimbursement for postage cost.

(a) It shall be the duty of the county board of registrars to determine the eligibility of each person applying to register to vote in such county.

(b) Upon finding an elector eligible to vote in the county, the county board of registrars shall have the duty of determining and placing the

elector in the proper congressional district; state Senate district; state House district; county commission district, if any; county or independent board of education district, if any; and municipal governing authority district, if any; such other voting districts, if any; and precinct.

(c) It shall be the duty of each incorporated municipality located wholly or partially within the boundaries of a county to provide a detailed map showing the municipal boundaries, municipal precinct boundaries, and voting district boundaries to the county board of registrars no later than January 1, 1995, and within 15 days of any changes in such municipal boundaries, precinct boundaries, or voting district boundaries. Upon receiving any changes in municipal boundaries, the county board of registrars shall provide to the municipality a list of all voters affected by such changes with the street addresses of such electors for the purpose of verifying the changes with the municipality. Upon receiving the list of electors affected by changes in municipal boundaries, the municipality shall immediately review the information provided by the county registrars and advise the county registrars of any discrepancies.

(d) Each person submitting an application for voter registration shall be notified of the disposition of such application. In the event that the person is found ineligible, the person shall be notified of the reasons for ineligibility. Such notices shall be sent to the person in writing by nonforwardable, first-class mail at the mailing address listed on the application.

(e) Each elector found eligible to be registered to vote by the board of registrars shall be issued a card which shall contain the elector's name and address, a block or space for the elector's signature, the date of the elector's registration, the name and location of the elector's polling place or polling places if the county and municipal polling places are not the same, and the designation of the elector's congressional district; state Senate district; state House district; county commission district, if any; county or independent board of education district, if any; and municipal governing authority district, if any, and such other voting districts, if any. On the reverse side of the card, there shall be printed instructions which shall indicate the procedure to be followed in the event of the change of address of the elector. In the event an elector changes residences within the county in which an elector is registered to vote, the elector may change such elector's address by returning the card to the board of registrars of such county indicating the new address. Upon receipt of such card, the board of registrars shall make the necessary changes in the elector's registration records and issue a new card to the elector. In the event that an elector's precinct, polling place, or voting district or districts change, a new card shall be issued

to the elector reflecting such changes. When the boundaries of a precinct are changed, all affected electors shall be sent a new card prior to the next primary or election. The form of such cards shall be determined by the Secretary of State. The issuance of such cards shall be sufficient as a notification of the disposition of an application for voter registration under this Code section, provided that such cards are sent by nonforwardable, first-class mail.

(f) In the event that the registrars are required to issue voters new cards under subsection (e) of this Code section due to changes in districts or precincts as a result of reapportionment or court order, the registrars may apply to the Secretary of State prior to June 30 of each year for reimbursement of the costs of postage with respect to mailing such cards during the 12 month period ending on June 30 of that year. The Secretary of State shall receive all such applications and shall, no later than June 30 of each year, reimburse the counties for such costs from funds specifically appropriated for that purpose. In the event that the total amount of the requests for reimbursement exceeds the funds appropriated for reimbursement, the Secretary of State shall reimburse the counties on a pro rata basis. In the event that no funds are specifically appropriated for reimbursement, no such reimbursement shall be made.

(g) In the event that the registrars of a county, serving as registrars for a municipality, are required to issue voters in a municipality new cards under subsection (e) of this Code section due to changes in municipal districts or precincts, the municipality shall reimburse the county registrars for the cost of postage in mailing such cards to the voters.

History.

Code 1981, § 21-2-226, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1997, p. 590, § 22; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 18; Ga. L. 2015, p. 385, § 6-2/HB 252; Ga. L. 2017, p. 697, § 10/HB 268.

Editor's notes.

Ga. L. 2015, p. 385, § 1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Administrative rules and regulations.

Acceptance of voter registration applications, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.01.

JUDICIAL DECISIONS

Federal suit asserting voter purging from rolls. — In a suit asserting a county was unlawfully purging voters from the registration rolls, the court denied the defendants' motion to dismiss because the plaintiffs did not challenge the enactment of a state law, but merely the defendants' implementation and enforcement of the law; thus, the defendants were not entitled to legislative immunity. Ga. State Conf. of the NAACP v. DeKalb County Bd. of Registration Elections, 484 F. Supp. 3d 1308, 2020 U.S. Dist. LEXIS 162683 (N.D. Ga. 2020).

21-2-227. Duty of registrars to furnish list of electors for elections held in governmental subdivisions.

Whenever the authority of a governmental subdivision within a county who is charged with the responsibility of holding elections shall request the board of registrars of the county to furnish a list of electors qualified to vote in the election involved and residing within the limits of such subdivision, it shall be the duty of the board of registrars to prepare promptly and furnish such a list at no charge.

History.
Code 1981, § 21-2-227, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1997, p. 590, § 23; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 177 et seq.
C.J.S.
29 C.J.S., Elections, §§ 59, 75 et seq.
ALR.
Remedy and procedure for purging voters' registration lists, 96 A.L.R. 1035.

21-2-228. Examination of electors' qualifications; subpoenas; notice and hearing; right of appeal.

(a) The board of registrars of each county or municipality shall have the right and shall be charged with the duty of examining from time to time the qualifications of each elector of the county or municipality whose name is entered upon the list of electors and shall not be limited or estopped by any action previously taken.

(b) For the purpose of determining the qualification or disqualification of applicants and electors, the board of registrars may, upon at least three days' notice, require the production of books, papers, and other material and, upon like notice, may subpoena witnesses. The board may swear any witness appearing before it. If the registrars shall differ among themselves upon any question coming before them, the concurrent votes of a majority of the registrars shall control.

(c) The sheriff, any deputy sheriff, or any lawful constable of such county or peace officer of such municipality shall serve all summonses, notices, and subpoenas issued by such registrars and placed in the hands of any such official. Such official shall receive such compensation as is provided for like services in the superior court. In case of the refusal of any person subpoenaed to attend or testify, such fact shall be reported immediately by the registrars to the appropriate superior court, or to a judge thereof, and such court or judge shall order such witness to attend and testify; and, on failure or refusal to obey such order, such witness shall be dealt with as for contempt. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court.

(d) If the right of any person to remain on the list of electors is questioned by the registrars, they shall give such person at least three days' written notice of the date, time, and place of a hearing to determine such right which shall be served upon such person either by first-class mail addressed to the mailing address shown on the person's voter registration records or in the manner provided in subsection (c) of this Code section for other notices.

(e) If, after conducting a hearing, the registrars find that the elector is not qualified to remain on the list of electors, the registrars shall remove the name of such elector from the list of electors. The elector shall be notified of such decision in writing either by first-class mail addressed to the mailing address shown on the person's voter registration records or in the manner provided in subsection (c) of this Code section for other notices.

(f) An elector whose name is removed from the list of electors in accordance with this Code section shall have a right of appeal of such decision to the superior court of the county by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars. A copy of such petition shall be served upon the registrars. Unless and until the decision of the registrars is reversed by the court, the decision of the registrars shall stand.

History.
Code 1981, § 21-2-228, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1997, p. 590, § 24; Ga. L. 1998, p. 295, § 1.

Cross references.
Method of appeal from registration decisions, Ga. Const. 1983, Art. II, Sec. II, Para. I.

JUDICIAL DECISIONS

Appellate jurisdiction. — Without a clear connection to a specific election, a challenge to a voter's qualifications brought under O.C.G.A. § 21-2-228 or O.C.G.A. § 21-2-229 does not come within the jurisdiction of the Supreme Court of Georgia over "cases of election contest," Ga. Const. 1983, Art. VI, Sec. VI, Para. II (2). To the extent that Jarrard v. Clayton County Bd. of Registrars, 425 S.E.2d 874 (1992), was decided as an election contest, it was overruled. Cook v. Board of Registrars, 291 Ga. 67, 727 S.E.2d 478, 2012 Ga. LEXIS 449 (2012), transferred, 320 Ga. App. 447, 740 S.E.2d 223, 2013 Ga. App. LEXIS 210 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-617 and former Code Sections 21-2-225 and 21-2-236 are included in the annotations for this Code section.

Removal of name based on receipt of returned notice. — A registrar is not authorized to remove a person's name from the list of electors based on the registrar's receipt of a returned letter notifying such person of a hearing under former § 21-2-225. 1982 Op. Att'y Gen. No. 82-23 (decided under former Code Section 21-2-225 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Although a registrar may well question

voter eligibility based solely on returned mail from the voter's address of record, it is imperative that all reasonable measures be taken to maximize the possibility of receipt by the elector of the notice of hearing, e.g., mail forwarding. 1982 Op. Att'y Gen. No. 82-23 (decided under former Code Section 21-2-225 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Procedure for disqualification of convicted voter. — As the Election Code does not establish a procedure for automatic disqualification of voters convicted of a crime involving moral turpitude, it is suggested that written notice be given to the elector as required by former Code 1933, § 34-617, or, if the list has already been prepared, the voter should be called upon to show cause why the voter's name should not be removed from the voters list. 1974 Op. Att'y Gen. No. 74-128 (decided prior to 1983 amendment of § 21-2-219; decided under former Code 1933, § 34-617 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Questioning of residence of elector proper. — Inasmuch as the law clearly states that an elector be registered in the election district in which the elector resides, it would be proper for the board of registrars to question the qualifications of any elector whom the board believes to be residing outside the district in which such person is registered. 1968 Op. Att'y Gen. No. 68-220 (decided under former Code 1933, §§ 34-408, 34-603, 34-604 and 34-627 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Person who moves away from a county and makes a home elsewhere forfeits the right to vote in that county. 1965-66 Op. Att'y Gen. No. 65-56 (decided under former Code 1933, §§ 34-408, 34-602, 34-603, 34-604, and 34-627 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Board of registrars has the right and duty to make changes in its records if it learns from voters' certificates of changes of names or addresses of voters. 1970 Op. Att'y Gen. No. U70-12 (decided under former Code 1933, §§ 34-408, 34-602, 34-603, 34-604, and 34-627 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Delivery of absentee ballot awaiting completion of proceedings. — Where the registration card corresponding to an otherwise proper application for an absentee ballot is signed but is otherwise incomplete in some respect, until the completion of proceedings in accordance with former Code 1933, §§ 34-408, 34-602, 34-603, 34-604, and 34-627, the registrar may not refuse to deliver the absentee ballot unless the absence of information sought by the registration card on file gives rise to a question as to the applicant's identity. 1976 Op. Att'y Gen. No. 76-2 (decided under former Code 1933, §§ 34-408, 34-602, 34-603, 34-604, and 34-627 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Review of decision to remove name of elector from list. — An elector whose name has been removed from the list of electors upon a challenge by a board of registrars after an administrative hearing is entitled to have that decision reviewed by a superior court. 1992 Op. Att'y Gen. No. 92-16 (decided under former Code Section 21-2-236 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, § 174 et seq.

C.J.S.

29 C.J.S., Elections, §§ 69, 70 et seq.

ALR.

Nonregistration as affecting legality of votes cast by persons otherwise qualified, 101 A.L.R. 657.

Constitutionality of voter participation provisions for primary elections, 120 A.L.R.5th 125.

Validity of statute requiring proof and disclosure of information as condition of registration to vote, 48 A.L.R.6th 181.

21-2-229. Challenge of applicant for registration by other electors; notice and hearing; right of appeal; sanctions for board's noncompliance.

(a) Any elector of a county or municipality may challenge the qualifications of any person applying to register to vote in the county or municipality and may challenge the qualifications of any elector of the county or municipality whose name appears on the list of electors. Such challenges shall be in writing and shall specify distinctly the grounds of the challenge. There shall not be a limit on the number of persons whose qualifications such elector may challenge.

(b) Upon such challenge being filed with the board of registrars, the registrars shall set a hearing on such challenge within ten business days after serving notice of the challenge. Notice of the date, time, and place of the hearing shall be served upon the person whose qualifications are being challenged along with a copy of such challenge and upon the elector making the challenge within ten business days following the filing of the challenge. The person being challenged shall receive at least three days' notice of the date, time, and place of the hearing. Such notice shall be served either by first-class mail addressed to the mailing address shown on the person's voter registration records or in the manner provided in subsection (c) of Code Section 21-2-228.

(c) The burden shall be on the elector making the challenge to prove that the person being challenged is not qualified to remain on the list of electors. The board of registrars shall have the authority to issue subpoenas for the attendance of witnesses and the production of books, papers, and other material upon application by the person whose qualifications are being challenged or the elector making the challenge. The party requesting such subpoenas shall be responsible to serve such subpoenas and, if necessary, to enforce the subpoenas by application to the superior court. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court.

(d) After the hearing provided for in this Code section, the registrars shall determine said challenge and shall notify the parties of their decision. If the registrars uphold the challenge, the person's application for registration shall be rejected or the person's name removed from the list of electors, as appropriate. The elector shall be notified of such decision in writing either by first-class mail addressed to the mailing address shown on the person's voter registration records or in the manner provided in subsection (c) of Code Section 21-2-228 for other notices.

(e) Either party shall have a right of appeal from the decision of the registrars to the superior court by filing a petition with the clerk of the

superior court within ten days after the date of the decision of the registrars. A copy of such petition shall be served upon the other parties and the registrars. Unless and until the decision of the registrars is reversed by the court, the decision of the registrars shall stand.

(f) Failure to comply with the provisions of this Code section by the board of registrars shall subject such board to sanctions by the State Election Board.

History.

Code 1981, § 21-2-229, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1997, p. 590, § 25; Ga. L. 1998, p. 295, § 1; Ga. L. 2021, p. 14, § 15/SB 202.

The 2021 amendment, effective March 25, 2021, added the last sentence in subsection (a); in subsection (b), inserted "within ten business days after serving notice of the challenge" at the end of the first sentence and inserted "within ten business days following the filing of the challenge" at the end of second sentence; and added subsection (f).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Appellate jurisdiction. — Without a clear connection to a specific election, a challenge to a voter's qualifications brought under O.C.G.A. § 21-2-228 or

O.C.G.A. § 21-2-229 does not come within the jurisdiction of the Supreme Court of Georgia over "cases of election contest," Ga. Const. 1983, Art. VI, Sec. VI, Para. II (2). To the extent that Jarrard v. Clayton County Bd. of Registrars, 425 S.E.2d 874 (1992), was decided as an election contest, it was overruled. Cook v. Board of Registrars, 291 Ga. 67, 727 S.E.2d 478, 2012 Ga. LEXIS 449 (2012), transferred, 320 Ga. App. 447, 740 S.E.2d 223, 2013 Ga. App. LEXIS 210 (2013).

21-2-230. Challenge of persons on list of electors by other electors; procedure; hearing; right of appeal.

(a) Any elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an election. Such challenge shall be in writing and specify distinctly the grounds of such challenge. Such challenge may be made at any time prior to the elector whose right to vote is being challenged voting at the elector's polling place or, if such elector cast an absentee ballot, prior to 5:00 P.M. on the day before the absentee ballots are to begin to be scanned and tabulated; provided, however, that challenges to persons voting by absentee ballot in person at the office of the registrars or the absentee ballot clerk shall be made prior to such person's voting. There shall not be a limit on the number of persons whose qualifications such elector may challenge.

(b) Upon the filing of such challenge, the board of registrars shall immediately consider such challenge and determine whether probable cause exists to sustain such challenge. If the registrars do not find probable cause, the challenge shall be denied. If the registrars find probable cause, the registrars shall notify the poll officers of the challenged elector's precinct or, if the challenged elector voted by absentee ballot, notify the poll officers at the absentee ballot precinct and, if practical, notify the challenged elector and afford such elector an opportunity to answer.

(c) If the challenged elector appears at the polling place to vote, such elector shall be given the opportunity to appear before the registrars and answer the grounds of the challenge.

(d) If the challenged elector does not cast an absentee ballot and does not appear at the polling place to vote and if the challenge is based on grounds other than the qualifications of the elector to remain on the list of electors, no further action by the registrars shall be required.

(e) If the challenged elector cast an absentee ballot and it is not practical to conduct a hearing prior to the close of the polls and the challenge is based upon grounds other than the qualifications of the elector to remain on the list of electors, the absentee ballot shall be treated as a challenged ballot pursuant to subsection (e) of Code Section 21-2-386. No further action by the registrars shall be required.

(f) If the challenged elector does not cast an absentee ballot and does not appear at the polling place to vote and the challenge is based on the grounds that the elector is not qualified to remain on the list of electors, the board of registrars shall proceed to hear the challenge pursuant to Code Section 21-2-229.

(g) If the challenged elector cast an absentee ballot and the challenge is based upon grounds that the challenged elector is not qualified to remain on the list of electors, the board of registrars shall proceed to conduct a hearing on the challenge on an expedited basis prior to the certification of the consolidated returns of the election by the election superintendent. The election superintendent shall not certify such consolidated returns until such hearing is complete and the registrars have rendered their decision on the challenge. If the registrars deny the challenge, the superintendent shall proceed to certify the consolidated returns. If the registrars uphold the challenge, the name of the challenged elector shall be removed from the list of electors and the ballot of the challenged elector shall be rejected and not counted and, if necessary, the returns shall be adjusted to remove any votes cast by such elector. The elector making the challenge and the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229.

(h) If the challenged elector appears at the polls to vote and it is practical to conduct a hearing on the challenge prior to the close of the polls, the registrars shall conduct such hearing and determine the merits of the challenge. If the registrars deny the challenge, the elector shall be permitted to vote in the election notwithstanding the fact that the polls may have closed prior to the time the registrars render their decision and the elector can actually vote, provided that the elector proceeds to vote immediately after the decision of the registrars. If the registrars uphold the challenge, the challenged elector shall not be permitted to vote and, if the challenge is based upon the grounds that the elector is not qualified to remain on the list of electors, the challenged elector's name shall be removed from the list of electors.

(i) If the challenged elector appears at the polls to vote and it is not practical to conduct a hearing prior to the close of the polls or if the registrars begin a hearing and subsequently find that a decision on the challenge cannot be rendered within a reasonable time, the challenged elector shall be permitted to vote by casting a challenged ballot on the same type of ballot that is used by the county or municipality for provisional ballots. Such challenged ballot shall be sealed in double envelopes as provided in subsection (a) of Code Section 21-2-419 and, after having the word "Challenged," the elector's name, and the alleged cause of the challenge written across the back of the outer envelope, the ballot shall be deposited by the person casting such ballot in a secure,

sealed ballot box notwithstanding the fact that the polls may have closed prior to the time the registrars make such a determination, provided that the elector proceeds to vote immediately after such determination of the registrars. In such cases, if the challenge is based upon the grounds that the challenged elector is not qualified to remain on the list of electors, the registrars shall proceed to finish the hearing prior to the certification of the consolidated returns of the election by the election superintendent. If the challenge is based on other grounds, no further action shall be required by the registrars. The election superintendent shall not certify such consolidated returns until such hearing is complete and the registrars have rendered their decision on the challenge. If the registrars deny the challenge, the superintendent shall proceed to certify the consolidated returns. If the registrars uphold the challenge, the name of the challenged elector shall be removed from the list of electors and the ballot of the challenged elector shall be rejected and not counted and, if necessary, the returns shall be adjusted to remove any votes cast by such elector. The elector making the challenge and the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229.

(j) Failure to comply with the provisions of this Code section by the board of registrars shall subject such board to sanctions by the State Election Board.

History.

Code 1981, § 21-2-230, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 6, 30; Ga. L. 2000, p. 135, § 1; Ga. L. 2003, p. 517, § 22; Ga. L. 2005, p. 253, § 27/HB 244; Ga. L. 2010, p. 914, § 12/HB 540; Ga. L. 2012, p. 995, § 18/SB 92; Ga. L. 2019, p. 7, § 8/HB 316; Ga. L. 2021, p. 14, § 16/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (a), substituted "absentee ballots are to begin to be scanned and tabulated" for "election" near the middle of the third sentence and added the last sentence; and added subsection (j).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election

system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan

panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Election challenger's timely filed election contest, filed after the election, was erroneously dismissed, as such was not moot merely because the challenger failed to file the contest prior to the election, given that no statutory provision or case law supported this proposition, and the petition sufficiently stated a claim upon which relief could be granted. Allen v. Yost, 281 Ga. 102, 636 S.E.2d 517, 2006 Ga. LEXIS 836 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34-605, are included in the annotations for this Code section.

One who moves away from a county forfeits the right to vote in that county. 1965-66 Op. Att'y Gen. No. 65-56 (decided under former Code 1933, § 34-605).

Notice of challenge. — The registrars are required by law to give notice to the person whose right to appear on the voters list is questioned either by the registrars or by any citizen. The notice is to be in writing and served upon the person either personally or by leaving the same at the person's most notorious place of abode. 1945-47 Ga. Op. Att'y Gen. 242 (decided under former Code 1933, § 34-605).

Service of challenge. — A notice of challenge of a registered voter is served by the sheriff, the deputy, or a lawful constable. The costs of service are paid from the county treasury. 1945-47 Ga. Op. Att'y Gen. 242 (decided under former Code 1933, § 34-605).

Proof of disqualification required for removal from voters list. — The registrars may not remove the name of a challenged voter from the voters list except upon legal proof of disqualification. 1945-47 Ga. Op. Att'y Gen. 244 (decided under former Code 1933, § 34-605).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 1793.

C.J.S.
29 C.J.S., Elections, § 75 et seq.

21-2-231. Identification of convicted felons, noncitizens, persons declared mentally incompetent, and deceased persons and process for removal of such persons from list of electors; inactive voter list.

(a) Unless otherwise notified by the Secretary of State, the Georgia Crime Information Center shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State and The Council of Superior Court Clerks of Georgia a complete list of all persons, including dates of birth, social security numbers, and other information as prescribed by the Secretary of State or The Council of Superior Court Clerks of Georgia, who were convicted of a felony in this state since the preceding reporting period. The Secretary of State or The Council of Superior Court Clerks of Georgia may, by agreement with the commissioner of corrections and the commissioner of community supervision, obtain criminal information relating to the conviction, sentencing, and completion of sentencing requirements of felonies. Additionally, the Secretary of State and The Council of Superior Court Clerks of Georgia shall be authorized to obtain such criminal information relating to Georgia electors convicted of a felony in another state, if such information is available.

(a.1) The clerk of the superior court of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who identify themselves as not being citizens of the United States during their qualification to serve as a juror during the preceding calendar month in that county.

(b) The judge of the probate court of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who were declared mentally incompetent during the preceding calendar month in the county and whose voting rights were removed.

(c)(1) Upon receipt of the lists described in subsections (a.1) and (b) of this Code section, the Secretary of State shall transmit the names of such persons whose names appear on the list of electors to the appropriate county board of registrars who shall remove all such names from the list of electors and shall mail a notice of such action

and the reason therefor to the last known address of such persons by first-class mail.

(2) Upon receipt of the list described in subsection (a) of this Code section and the lists of persons convicted of felonies in federal courts received pursuant to 52 U.S.C. Section 20507(g), the Secretary of State shall transmit the names of such persons whose names appear on the lists of electors to the appropriate county board of registrars who shall mail a notice to the last known address of each such person by first-class mail, stating that the board of registrars has received information that such person has been convicted of a felony and will be removed from the list of electors 30 days after the date of the notice unless such person requests a hearing before the board of registrars on such removal.

(d) Unless otherwise notified by the Secretary of State, the local registrar of vital statistics of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who died during the preceding calendar month in the county. The Secretary of State may, by agreement with the commissioner of public health, obtain such information from the state registrar of vital statistics. Additionally, the Secretary of State is authorized to obtain such lists of deceased Georgia electors, if possible, from other states.

(e) Upon receipt of the lists described in subsection (d) of this Code section, the Secretary of State or his or her designated agent shall remove all such names of deceased persons from the list of electors and shall notify the registrar in the county where the deceased person was domiciled at the time of his or her death.

(e.1) County registrars may obtain information about persons who died from obituaries published by local newspapers, death certificates, verifiable knowledge of the death, and information provided in writing and signed by a family member or members of the deceased person. County registrars shall determine if such deceased person's name appears on the list of electors and, if so, shall remove such name from the list of electors and shall send by first class mail to the mailing address shown on the elector's voter registration records a notice of such action and the reason therefor.

(f) County registrars shall initiate appropriate action regarding the right of an elector to remain on the list of qualified registered voters within 60 days after receipt of the information described in this Code section. Failure to take such action may subject the registrars or the county governing authority for whom the registrars are acting to a fine by the State Election Board.

(g) The Secretary of State shall provide to The Council of Superior Court Clerks of Georgia not later than the last day of each month all information enumerated in subsections (b) through (d) of this Code section and Code Section 21-2-232 and a list of voters who have failed to vote and inactive voters, as identified pursuant to Code Sections 21-2-234 and 21-2-235. Such data shall only be used by the council, the council's vendors, superior court clerks, and jury clerks for maintenance of state-wide master jury lists and county master jury lists. Such data shall be provided to the council or its vendors in the electronic format required by the council for such purposes.

History.

Code 1981, § 21-2-231, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 9; Ga. L. 1997, p. 590, § 26; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 7, 31; Ga. L. 1999, p. 52, § 10; Ga. L. 2001, p. 269, § 14; Ga. L. 2005, p. 253, § 28/HB 244; Ga. L. 2008, p. 781, § 9/HB 1112; Ga. L. 2009, p. 327, § 1/HB 549; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 59, § 1-65/HB 415; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2012, p. 995, § 19/SB 92; Ga. L. 2014, p. 451, § 9/HB 776; Ga. L. 2015, p. 422, § 5-52/HB 310; Ga. L. 2019, p. 7, § 9/HB 316.

Cross references.

Purging list by using list of persons for whom death certificates filed, § 31-10-15.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, a comma was deleted following "subsections (a.1)" in paragraph (c)(1).

Editor's notes.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

U.S. Code.

The National Voter Registration Act of 1993 is codified at 52 U.S.C. § 20501 et seq.

Section 20507 of Title 52 U.S.C., referred to in this Code section, concerns the requirements with respect to administration of voter registration.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-203, 34-204 and 34-621 and former Code Section 21-2-219 are included in the annotations for this Code section.

Procedure for disqualification of convicted voter. — The Election Code does not establish a procedure for the automatic disqualification of a voter who has been convicted of a crime involving moral turpitude; therefore, it is suggested that written notice be given to the elector as required by former Code 1933, § 34-617 (see now O.C.G.A. § 21-2-225), or, if the list has already been prepared, the voter should be called upon to show cause why the voter's name should not be removed from the voters list. 1974 Op. Att'y Gen. No. 74-128 (decided prior to 1983 amendment of § 21-2-219 and decided under former Code 1933, §§ 34-203, 34-204

and 34-621 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Privacy Act of 1974 (5 U.S.C. § 552a note) did not alter the powers conferred or obligations imposed by former Code 1933, § 34-621 (see now O.C.G.A. § 21-2-232). 1976 Op. Att'y Gen. No. 76-6 (decided under former Code 1933, §§ 34-203, 34-204 and 34-621 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, § 179.

C.J.S.

29 C.J.S., Elections, § 75 et seq.

ALR.

Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon disqualification to vote, hold office, practice profession, sit on jury, or the like, 175 A.L.R. 784.

21-2-232. Removal of elector's name from list of electors.

(a) An elector may request to have such elector's name removed from the list of electors by making a written request to the registrars of such elector's county of residence. Upon receipt of such request, the registrars shall remove such elector's name from the list of electors and shall confirm such removal by written notice by first-class mail sent to the address on the elector's registration records.

(b)(1) When an elector of this state moves to another state and registers to vote and the registration officials in such state send a notice of cancellation reflecting the registration of the elector in the other state, which includes a copy of such elector's voter registration application bearing the elector's signature, the Secretary of State or the board of registrars, as the case may be, shall remove such elector's name from the list of electors. It shall not be necessary to send a confirmation notice to the elector in such circumstances.

(2) When an elector of this state moves to another state and the registration officials in such other state or a nongovernmental entity as described in subsection (d) of Code Section 21-2-225 send a notice of cancellation or other information indicating that the elector has moved to such state but such notice or information does not include a copy of such elector's voter registration application in such other state bearing the elector's signature, the Secretary of State or the board of registrars, as the case may be, shall send a confirmation notice to the elector as provided in Code Section 21-2-234.

(3) Once becoming a member of the nongovernmental entity described in subsection (d) of Code Section 21-2-225, the Secretary of State shall obtain regular information from such entity regarding electors who may have moved to another state, died, or otherwise become ineligible to vote in Georgia. The Secretary of State shall use such information to conduct list maintenance on the list of eligible electors.

History.

Code 1981, § 21-2-232, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2019, p. 7, § 10/HB 316; Ga. L. 2021, p. 14, § 17/SB 202; Ga. L. 2023, p. 730, § 2(4)/HB 475, effective July 1, 2023.

The 2021 amendment, effective March 25, 2021, added paragraph (b)(3).

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "send a notice" for "sends a notice" in paragraph (b)(2).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not dimin-

ished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

ALR.

Validity of statute providing for purging voter registration lists of inactive voters, 51 A.L.R.6th 287.

21-2-233. Comparison of change of address information supplied by United States Postal Service with electors list; removal from list of electors; notice to electors.

(a) The Secretary of State is authorized to cause at his or her

discretion the official list of electors to be compared to the change of address information supplied by the United States Postal Service through its licensees periodically for the purpose of identifying those electors whose addresses have changed.

(b) If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved to a different address in the county in which the elector is presently registered, the list of electors shall be changed to reflect the new address and the elector shall be sent a notice of the change by forwardable mail at the elector's old address with a postage prepaid, preaddressed return form by which the elector may verify or correct the address information. The registrars may also send a notice of the change by forwardable mail to the elector's new address with a postage prepaid, preaddressed return form by which the elector may verify or correct the address information.

(c) If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved to a different address outside of the boundaries of the county or municipality in which the elector is presently registered, such elector shall be sent a confirmation notice as provided in Code Section 21-2-234 at the old address of the elector. The registrars may also send a confirmation notice to the elector's new address. If the elector confirms the change of address to an address outside of the State of Georgia, the elector's name shall be removed from the appropriate list of electors. If the elector confirms the change of address to an address outside of the boundaries of the county or municipality in which the elector is presently registered, but still within the State of Georgia, the elector's registration shall be transferred to the new county or municipality. The Secretary of State or the registrars shall forward the confirmation card to the registrars of the county in which the elector's new address is located and the registrars of the county of the new address shall update the voter registration list to reflect the change of address. If the elector responds to the notice and affirms that the elector has not moved, the elector shall remain on the list of electors at the elector's current address. If the elector fails to respond to the notice within 30 days after the date of the notice, the elector shall be transferred to the inactive list provided for in Code Section 21-2-235.

(d) Whenever an elector's name is removed from the list of electors by the county registrars because the elector has furnished in writing to the registrar a residence address that is located outside of the State of Georgia, the registrars shall notify the elector in writing at the elector's new address that the elector's name is being deleted from the list of electors.

(e) Nothing in this Code section shall prevent the removal from the list of electors of an elector for ineligibility to vote.

History.
Code 1981, § 21-2-233, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 10; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 19; Ga. L. 2003, p. 517, § 23; Ga. L. 2005, p. 253, § 29/HB 244; Ga. L. 2012, p. 995, § 20/SB 92; Ga. L. 2017, p. 697, § 11/HB 268.

21-2-234. Electors who have failed to vote and with whom there has been no contact in five years; confirmation notice requirements and procedure; time for completion of list maintenance activities.

(a)(1) As used in this Code section and Code Section 21-2-235, the term "no contact" shall mean that the elector has not filed an updated voter registration card, has not filed a change of name or address, has not signed a petition which is required by law to be verified by the election superintendent of a county or municipality or the Secretary of State, has not signed a voter's certificate, has not submitted an absentee ballot application or voted an absentee ballot, and has not confirmed the elector's continuation at the same address during the preceding five calendar years.

(2) In the first six months of each odd-numbered year, the Secretary of State shall identify all electors whose names appear on the list of electors with whom there has been no contact during the preceding five calendar years and who were not identified as changing addresses under Code Section 21-2-233. The confirmation notice described in this Code section shall be sent to each such elector during each odd-numbered year. Such notices shall be sent by forwardable, first-class mail.

(b) When mailings to electors whose names appear on the list of electors, including, but not limited to, acknowledgments under Code Section 21-2-226, are returned undeliverable by the United States Postal Service, the confirmation notice described in this Code section shall be sent to such electors.

(c) The confirmation notice shall be a postage prepaid, preaddressed return card on which an elector may state such elector's current address and which also includes a notice which states substantially the following:

(1) If the elector has not changed addresses or has changed addresses within the county or municipality in which the elector is currently registered, the elector must return the card with the updated information, if any, within 30 days after the date of the notice; and

(2) If the card is not returned within 30 days after the date of the

notice, the elector's name shall be transferred to the inactive list of electors provided for in Code Section 21-2-235.

(d) If the elector returns the card and shows that he or she has changed residence to a place outside of the State of Georgia, the elector's name shall be removed from the appropriate list of electors. If the elector confirms his or her change of address to an address outside of the boundaries of the county or municipality in which the elector is currently registered, but still within the State of Georgia, the elector's registration shall be transferred to the new county or municipality. The Secretary of State or the registrars shall forward the confirmation card to the registrars of the county in which the elector's new address is located, and the registrars of the county of the new address shall update the voter registration list to reflect the change of address.

(e) If the elector returns the card and states that the elector has changed residences within the county or municipality in which the elector is currently registered, the elector shall remain on the list of electors, the registration records shall be corrected to reflect such new address, and a new voter identification card shall be issued pursuant to Code Section 21-2-226.

(f) If such elector returns the card and confirms that such elector continues to reside at the current address at which such elector is registered, the fact of such confirmation shall be recorded and the elector shall remain on the list of electors.

(g) If the elector fails to return the card within 30 days after the date of the notice, the elector shall be transferred to the inactive list provided for in Code Section 21-2-235.

(h) Nothing in this Code section shall prevent the removal from the list of electors of an elector for ineligibility to vote.

(i) List maintenance activities pursuant to this Code section and Code Section 21-2-233 shall be completed not later than 90 days prior to a general primary or general election for federal offices or a presidential preference primary. This subsection shall not apply to notices sent pursuant to subsection (b) of this Code section.

History.

Code 1981, § 21-2-234, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1996, p. 26, § 1; Ga. L. 1997, p. 649, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2017, p. 697, § 12/HB 268; Ga. L. 2019, p. 7, § 11/HB 316.

Law reviews.

For article, "Black and White Make Gray: Common Cause v. Kemp, What's the Trigger for Purging Voters?", see 69 Mercer L. Rev. 947 (2018).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For comment, "Voter Suppression Post-*Shelby*: Impacts and Issues of Voter Purge and Voter ID Laws," see 71 Mercer L. Rev. 857 (2020).

21-2-235. Inactive list of electors.

(a) In addition to the official list of electors, the Secretary of State shall also maintain an inactive list of electors. Notwithstanding any other provision of law to the contrary, the names of electors on the inactive list of electors shall not be counted in computing the number of ballots required for an election, the number of voting devices needed for a precinct, the number of electors required to divide or constitute a precinct, or the number of signatures needed on any petition. However, any elector whose name appears on the inactive list shall be eligible to sign a petition and such petition signature, if valid and regardless of the validity of the petition as a whole, shall be sufficient to return the elector to the official list of electors if the elector still resides at the address listed on the elector's registration records and shall be grounds to proceed under Code Section 21-2-234 to confirm the change of address of the elector if the elector provides a different address from the address which appears on the elector's registration records.

(b) An elector placed on the inactive list of electors shall remain on such list until the day after the second November general election held after the elector is placed on the inactive list of electors. If the elector makes no contact, as defined in Code Section 21-2-234, during that period, the elector shall be removed from the inactive list of electors. Not less than 30 nor more than 60 days prior to the date on which the elector is to be removed from the inactive list of electors, the board of registrars shall mail a notice to the address on the elector's registration record.

(c) An elector whose name is on the inactive list of electors may vote:

(1) If the elector has not changed residences, at the polling place of such elector's last address upon affirming in writing that such elector still resides at the address shown on such elector's registration records;

(2) If the elector has moved to an address within the county in the same precinct, such elector may vote at the polling place of such elector's last address upon affirming in writing that such elector resides in the county by completing a change of address card affirming the new address within the county; or

(3) If the elector has moved to an address within the county or municipality in a different precinct, such elector may vote at the polling place of such elector's last address, for that election and any runoffs resulting from such election only, upon affirming in writing that such elector still resides in the county or municipality and completing a change of address card affirming the new address within the county or municipality.

(d) If an elector whose name appears on the inactive list of electors appears at the polls and votes as provided under subsection (c) of this Code section, the board of registrars shall transfer the elector's name back to the official list of electors and shall make any necessary corrections in the elector's registration records.

(e) In addition to the official list of electors provided to each polling place, there shall also be provided an inactive list of electors.

History.
Code 1981, § 21-2-235, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1997, p. 649, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 24; Ga. L. 2010, p. 914, § 13/HB 540; Ga. L. 2019, p. 7, § 12/HB 316.

Cross references.
Inspection of public records, § 50-18-70 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-633 and 34-1101 and Code Section 21-2-242 are included in the annotations for this Code section.

Board of registrars could sell surplus voters' lists. 1971 Op. Att'y Gen. No. U71-140 (decided under former Code 1933, §§ 34-633 and 34-1101 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

Access to information on electors. — The names, addresses, and ZIP codes of electors must be furnished upon request for the fees set forth in former § 21-2-234. Any additional identifying information as may be collected and maintained must be made available for inspection and copying and a reasonable fee may be charged for expenses incurred or copies furnished. 1984 Op. Att'y Gen. No. 84-39 (decided under former Code Section 21-2-242 as it read prior to the 1994 repeal and reenactment by Ga. L. 1994, p. 1443, § 3).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 80.

21-2-236. Periods of retention of registration cards, applications, and records of list maintenance activities; rules and regulations regarding safekeeping and maintenance of electronic records.

(a) The voter registration cards of electors whose names appear on either the official list of electors or the list of inactive electors shall be retained on file as long as the elector remains on such lists and for a period of two years following the removal from the lists; provided, however, that an original voter registration card may be destroyed if an image of the face of the card is stored electronically.

(b) The registration applications of persons whose applications were rejected and all related material and records, or electronic facsimiles thereof, shall be retained on file for a period of two years after the date of the rejection.

(c) All records concerning list maintenance activities under Code Sections 21-2-233 and 21-2-234 shall be maintained for a period of two years and shall be available for public inspection and copying, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular elector is registered. Such records shall contain the name and address of all electors to whom confirmation notices are sent and information concerning whether each such elector has responded to such notice.

(d) The State Election Board shall adopt rules and regulations regarding the safekeeping and maintenance of electronic records of voter registration records maintained under this Code section.

History.
Code 1981, § 21-2-236, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 21/SB 92.

Cross references.
Georgia Records Act, § 50-18-90 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 174 et seq.

C.J.S.
29 C.J.S., Elections, § 69.

ARTICLE 7

PRECINCTS AND POLLING PLACES

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Implementation of voting precinct boundary changes. — With respect to counties having a population of 250,000 or less according to the United States Decennial Census of 1970 or any such future census, it is the superintendent who implements the voting precinct boundary changes set forth in O.C.G.A. § 21-2-260 et seq., notwithstanding any local Act establishing the governing authority as the entity implementing such changes. 1983 Op. Att'y Gen. No. 83-40.

21-2-260. Designation of precincts.

(a) Each election district existing as of December 31, 1982, shall constitute a separate precinct until and unless changed as provided in this article.

(b) The governing authority of each municipality shall determine and establish the number and boundaries of municipal voting precincts in accordance with the provisions of this article. Insofar as practicable, the precincts shall be the same as those for state and county elections.

History.
Orig. Code 1863, § 1231; Code 1868, § 1312; Code 1873, § 1285; Code 1882, § 1285; Ga. L. 1893, p. 29, § 1; Civil Code 1895, § 69; Civil Code 1910, § 79; Code 1933, § 34-1301; Code 1933, § 34-701, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 2; Ga. L. 1998, p. 295, § 1.

Cross references.
Further provisions regarding authority of municipalities to reapportion election districts, § 36-35-4.1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-601 are included in the annotations for this Code section.

If council members elected by wards, each ward should be separate election district (now precinct). — If a municipality requires that each of its council members be elected from a different ward and the candidates are elected by the electors residing in that ward, each ward should be a separate election district (now precinct). 1969 Op. Att'y Gen. No. 69-399 (decided under former Code 1933, § 34A-601).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 8.

C.J.S.
29 C.J.S., Elections, § 81 et seq.

21-2-261. Change in boundaries of precinct; creation of new precincts.

(a) The superintendent of a county or the governing authority of a municipality may, as provided in Code Section 21-2-262, divide or redivide any precinct in that county or municipality into two or more precincts of compact and contiguous territory, or alter the bounds of any precinct in that county or municipality, or form a precinct out of two or more adjoining precincts or parts of precincts in that county or municipality, or consolidate adjoining precincts in that county or municipality, so as to suit the convenience of the electors and to promote the public interests.

(b) No new precinct shall be formed that shall contain less than 100 electors.

(c) The bounds of a precinct shall not be altered on a day in which a primary or election is held, or during the period of 60 days prior to any general primary or election, or during the period of 30 days prior to any special primary or election. The superintendent of a county or the governing authority of a municipality shall promptly notify the board of registrars of any change in the bounds of precincts.

(d) Any precinct established or altered under the provisions of this article must conform with the requirements of subsection (a) of Code Section 21-2-261.1.

History.
Code 1933, § 34-702, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 2; Ga. L. 1996, p. 145, § 11; Ga. L. 1998, p. 295, § 1.

Cross references.
Further provisions regarding authority of municipalities to reapportion election districts, § 36-35-4.1.

Administrative rules and regulations.
Precincts, changes in boundaries, notification of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Election Districts and Polling Places, § 183-1-7-.01.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933 § 34A-602 are included in the annotations for this Code section.

Time limit provisions for altering election precinct boundaries. — It is only where the governing authority of the municipality seeks to alter the bounds of municipal election districts (now precincts) that the 30-day and 60-day time limit provisions of former Code 1933, § 34A-602 are triggered. Wall v. Board of Elections, 242 Ga. 566, 250 S.E.2d 408, 1978 Ga. LEXIS 1284 (1978) (decided under former Code 1933, § 34A-602).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 8 et seq.

C.J.S.
29 C.J.S., Elections, § 83.

21-2-261.1. Boundary requirements for precincts.

(a) All voting precincts established or altered under the provisions of this article shall consist of areas which are bounded on all sides only by:

(1) Visible features which are readily distinguishable upon the ground (such as streets, railroad tracks, streams, lakes, and ridges) and which are indicated upon official Department of Transportation maps, current census maps, city or county planning maps, official municipal maps, official county maps, or any combination of such maps;

(2) The boundaries of public parks;

(3) The boundaries of public school grounds;

(4) The boundaries of churches;

(5) The boundaries of counties and incorporated municipalities; or

(6) The boundaries of restricted access residential communities.

(b) The superintendent of a county or the governing authority of a municipality shall notify the board of registrars within ten days after such changes are adopted.

(c) The superintendent of a county or the governing authority of a

municipality shall file with the Secretary of State and the Legislative and Congressional Reapportionment Office:

(1) A map reflecting any changes in precincts within 20 days after the changes are made;

(2) A copy of any communications to or from the United States Department of Justice relating to any precincts within 20 days after such communication is sent or received;

(3) A copy of any pleading initiating a court action potentially affecting any precincts within 30 days after it is filed;

(4) A copy of any court order affecting any precincts within 20 days after it is entered;

(5) For precincts that use the boundaries of a restricted access residential community, a map clearly delineating the boundaries of the community and clearly depicting the streets contained within such community and a list of the streets within such community and the address ranges of such streets; and

(6) Any other documentation necessary to allow the Secretary of State to maintain a current listing of all precincts in this state.

History.
Code 1981, § 21-2-261.1, enacted by Ga. L. 1982, p. 1512, § 2; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 1, § 6; Ga. L. 1984, p. 133, § 1; Ga. L. 1993, p. 617, § 8; Ga. L. 1994, p. 1406, § 19; Ga. L. 1995, p. 8, § 1; Ga. L. 1996, p. 145, § 12; Ga. L. 1998, p. 295, § 1; Ga. L. 2013, p. 270, § 1/HB 87.

21-2-262. Investigation as to division, redivision, alteration, formation, or consolidation of precincts; petition of electors or board of registrars.

(a) The superintendent may upon his or her own motion direct the board of registrars to investigate the division or redivision of a precinct into two or more precincts, or the alteration of the bounds of any precinct, or the formation of one or more precincts out of two or more existing precincts or parts thereof or the consolidation of adjoining precincts. The board of registrars shall make a full investigation of the facts and shall promptly report to the superintendent its findings and recommendations as to the division, redivision, alteration, formation, or consolidation of the precincts. If the board of registrars shall find that a division, redivision, alteration, formation, or consolidation of precincts will promote the convenience of the electors and the public interests, it shall recommend a proper division, redivision, alteration, formation, or consolidation of precincts which conforms to the requirements of subsection (a) of Code Section 21-2-261.1 and shall accompany its report with a map, plat, or draft of the new election precinct or precincts proposed by it.

(a.1) Upon the petition of 20 electors or of the county executive committee of a political party to the superintendent of the county, praying for the division or redivision of a precinct into two or more precincts, or for the alteration of the bounds of any precinct, or for the formation of one or more precincts out of two or more existing precincts or parts thereof, or for the consolidation of adjoining precincts, the superintendent shall refer such petition to the board of registrars, which shall make a full investigation of the facts and shall promptly report to the superintendent its findings and recommendations as to the division, redivision, alteration, formation, or consolidation of the precincts prayed for. If the board of registrars shall find that a division, redivision, alteration, formation, or consolidation of precincts will promote the convenience of the electors and the public interests, it shall recommend a proper division, redivision, alteration, formation, or consolidation of precincts which conforms to the requirements of subsection (a) of Code Section 21-2-261.1 and shall accompany its report with a map, plat, or draft of the new election precinct or precincts proposed by it. Such petitions may specify the boundaries desired by the petitioners and may be accompanied by a map setting forth such boundaries.

(b) The board of registrars may also petition the superintendent for the division or redivision of any precinct into two or more precincts, or for the alteration of the bounds of any precinct, or for the formation of one or more precincts out of two or more existing precincts or parts thereof, or for the consolidation of adjoining precincts, accompanying its petition by a description of the proposed new precincts and by a map, plat, or draft thereof.

(c) Upon the presentation of any such petition by the board of registrars or upon the filing by the board of its report and recommendations as to any investigation presented under subsection (a) of this Code section, the superintendent may make such order for the division, redivision, alteration, formation, or consolidation of precincts as will, in the superintendent's opinion, promote the convenience of electors and the public interests; provided, however, that the superintendent shall not make any final order for the division, redivision, alteration, formation, or consolidation of precincts until at least 30 days after notice of such change shall have been advertised in the legal organ of the county. A copy of such notice shall be immediately submitted to the Secretary of State. Such notice shall state briefly the division, redivision, alteration, formation, or consolidation of precincts recommended by the board of registrars and the date upon which the same will be considered by the superintendent and shall contain a warning that any person objecting thereto must file his or her objections with the superintendent prior to such date. Upon the making of any such final order by the superintendent, a copy thereof shall be certified by the superintendent to the board of registrars.

(d) In any county having a population of more than 250,000 according to the United States decennial census of 1970 or any such future census, the powers and duties conferred upon the superintendent by this Code section and Code Sections 21-2-261 and 21-2-261.1 shall be exercised and performed by the governing authority of the county.

History.

Code 1933, § 34-703, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1977, p. 1199, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 2; Ga. L. 1987, p. 34, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1994, p. 1406, § 20; Ga. L. 1996, p. 145, § 13; Ga. L. 1998, p. 295, § 1; Ga. L. 2019, p. 7, § 13/HB 316.

Administrative rules and regulations.

Precincts, changes in boundaries, notification of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Election Districts and Polling Places, § 183-1-7-.01.

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Implementation of changes in voting precincts in counties with populations less than 250,000. — With respect to counties having a population of 250,000 or less according to the United States Decennial Census of 1970 or any such future census, it is the superintendent who implements the voting precinct boundary changes set forth in O.C.G.A. § 21-2-260 et seq., notwithstanding any local Act establishing the governing authority as the entity implementing such changes. 1983 Op. Att'y Gen. No. 83-40.

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, §§ 8, 9.

C.J.S.

29 C.J.S., Elections, § 81 et seq.

21-2-263. Reduction in size of, or provision of additional voting equipment or poll workers to, precincts containing more than 2,000 electors when voting in such precincts at previous general election not completed one hour after closing of polls.

(a) If, at the previous general election, a precinct contained more than 2,000 electors and if all those electors desiring to vote had not completed voting one hour following the closing of the polls, the superintendent shall either reduce the size of said precinct so that it shall contain not more than 2,000 electors in accordance with the procedures prescribed by this chapter for the division, alteration, and consolidation of precincts no later than 60 days before the next general election or provide additional voting equipment or poll workers, or both, before the next general election. For administering this Code section, the chief manager of a precinct which contained more than 2,000 electors at the previous general election shall submit a report thereof,

under oath, to the superintendent as to the time required for completion of voting by all persons in line at the time the polls were closed. Any such change in the boundaries of a precinct shall conform with the requirements of subsection (a) of Code Section 21-2-261.1.

(b) If, at the previous general election, a precinct contained more than 2,000 electors and if electors desiring to vote on the day of the election had to wait in line for more than one hour before checking in to vote, the superintendent shall either reduce the size of such precinct so that it shall contain not more than 2,000 electors in accordance with the procedures prescribed by this chapter for the division, alteration, and consolidation of precincts no later than 60 days before the next general election or provide additional voting equipment or poll workers, or both, before the next general election. For administering this Code section, the chief manager of a precinct which contained more than 2,000 electors at the previous general election shall submit a report thereof to the superintendent of the reported time from entering the line to checking in to vote. Such wait time shall be measured no fewer than three different times throughout the day (in the morning, at midday, and prior to the close of polls) and such results shall be recorded on a form provided by the Secretary of State. Any such change in the boundaries of a precinct shall conform with the requirements of subsection (a) of Code Section 21-2-261.1.

History.

Code 1933, § 34-704.1, enacted by Ga. L. 1968, p. 860, § 1; Ga. L. 1982, p. 1512, § 2; Ga. L. 1994, p. 1406, § 21; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 8/SB 82; Ga. L. 2021, p. 14, § 18/SB 202.

The 2021 amendment, effective March 25, 2021, designated the existing provisions of this Code section as subsection (a), inserted a comma following "If" and "election" at the beginning of the first sentence of subsection (a), and added subsection (b).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provi-

sional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 8 et seq.

C.J.S.
29 C.J.S., Elections, § 83.

21-2-264. Reimbursement of counties and municipalities for costs incurred pursuant to alteration of precinct boundaries.

In all cases of the division, redivision, alteration, formation, or consolidation of precincts, the costs of the proceedings shall be paid by the county or municipal governing authority, as appropriate. There may be appropriated to the Secretary of State funds to be granted to counties or municipalities for purposes of meeting the requirements of Code Section 21-2-261.1. Upon the filing of a written request by the election officials of any qualified county or municipality, a qualified county or municipality shall be reimbursed for all reasonable expenses incurred by such county or municipality which are directly related to the redrawing of voting precinct boundaries, verification of voting precinct residency, notification of voter precinct and polling place changes, and compilation and preparation of the electors list as necessitated by Code Section 21-2-261.1; provided, however, that such reimbursement of costs shall not exceed 25¢ per registered voter whose name appeared on such county's or municipality's electors list as of January 1, 1982. Any qualified county or municipality seeking reimbursement of such costs shall present an itemized description of such costs to the Secretary of State. If the Secretary of State, after a review of the report of such costs incurred by a county or municipality, shall find that all or portions of such costs were reasonable and were directly related to the preparation of such descriptions and lists, he or she shall approve all of those parts of the costs deemed reasonable and shall reimburse the counties or municipalities for such expenses. Any state funds necessary to carry out the provisions of this Code section shall come only from those funds

appropriated to the Secretary of State specifically for the purpose of implementing the provisions of Code Section 21-2-261.1. If such funds are not sufficient to bear completely the cost of fully implementing the provisions of Code Section 21-2-261.1, payment to the counties or municipalities seeking assistance shall be made on a pro rata basis subject to the availability of appropriated funds.

History.
Ga. L. 1941, p. 321, § 1; Code 1933, § 34-704, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 2; Ga. L. 1983, p. 964, § 1; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 30/HB 244; Ga. L. 2006, p. 69, § 1/SB 467.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 8.

C.J.S.
29 C.J.S., Elections, §§ 81, 82.

21-2-265. Selection of polling places; change; notice; objection; facilities for disabled voters; selection of polling places outside precinct; restriction on changes close to election date.

(a) The superintendent of a county or the governing authority of a municipality shall select and fix the polling place within each precinct and may, either on his, her, or its own motion or on petition of ten electors of a precinct, change the polling place within any precinct. Except in case of an emergency or unavoidable event occurring within ten days of a primary or election, which emergency or event renders any polling place unavailable for use at such primary or election, the superintendent of a county or the governing authority of a municipality shall not change any polling place until notice of the proposed change shall have been published for once a week for two consecutive weeks in the legal organ for the county or municipality in which the polling place is located. Additionally, during the seven days before and on the day of the first election following such change, a notice of such change shall be posted on the previous polling place and at three other places in the immediate vicinity thereof. Each notice posted shall state the location to which the polling place has been moved and shall direct electors to the new location. At least one notice at the previous polling place shall be a minimum of four feet by four feet in size. The occupant or owner of the previous polling place, or his or her agent, shall be notified in writing of such change at the time notice is published in the legal organ.

(b) Except in case of an emergency or unavoidable event occurring within ten days of a primary or election, which emergency or event renders any polling place unavailable for use, if a petition is presented to the superintendent of a county or the governing authority of a municipality on or before the day set for hearing of the petition for

change of a polling place, signed by 20 percent of the electors of the precinct objecting to the proposed change, such change shall not be ordered.

(c) In primaries, the superintendent of a county or the governing authority of a municipality in selecting and fixing the polling place in each precinct shall select a polling place which will provide adequate space for all parties conducting their primaries therein.

(d) The superintendent of a county or the governing authority of a municipality, in selecting and fixing a polling place in each precinct, shall select, if practicable, a polling place with suitable and appropriate access for disabled electors. If no such practicable locations exist within the precinct, the superintendent of a county or the governing authority of a municipality may effect temporary modifications to such existing locations as will, in his or her or its judgment, provide more convenient and appropriate access to the polling place by the disabled elector. No polling place shall be selected or used under any circumstances which does not have suitable and appropriate access for persons with disabilities for the purpose of voting; and any person, whether or not personally aggrieved, may bring an action for mandamus to require that all polling places in the county or municipality have suitable and appropriate access for persons with disabilities for the purpose of voting.

(e) On and after January 1, 2018, the superintendent may establish the polling place for a precinct outside the boundaries of the precinct if there is no suitable facility within the precinct which could be used as a polling place and if, by so doing, such polling place would better serve the needs of the voters; provided, however, that no polling place shall be established outside of the boundaries of the precinct within 90 days of a primary or election, and the superintendent shall submit a report to the State Election Board to demonstrate that there is no suitable facility within the precinct prior to establishing the polling place outside the boundaries of the precinct.

(f) A polling place shall not be changed on a day in which a primary, election, or runoff is held, or during the 60 day period prior to any general primary or general election or runoff from such primary or election, nor shall a polling place be changed in the 30 day period prior to any special primary or special election or runoff from such special primary or special election, except, in the discretion of the superintendent, when an emergency or event occurs during such time period which renders the polling place unavailable for use at such general primary, general election, special primary, special election, or runoff.

History.

Code 1933, § 34-705, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 8; Ga. L. 1978, p. 812, § 1; Ga. L. 1980, p. 1256, § 1.1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1995, p. 1302, §§ 14, 15; Ga. L. 1996, p. 26, § 1; Ga. L. 1996, p. 101, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p.

1231, §§ 8, 32; Ga. L. 2001, p. 240, § 20; Ga. L. 2006, p. 888, § 2/HB 1435; Ga. L. 2017, p. 697, § 13/HB 268; Ga. L. 2019, p. 7, § 14/HB 316; Ga. L. 2021, p. 14, § 19/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (a), substituted "during the seven days before and on the day of the first election" for "on the first election day" at the beginning of the third sentence, and added the present fourth and fifth sentences.

Cross references.

Access to and use of public buildings and facilities by physically handicapped persons generally, T. 30, C. 3.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding

the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Accessibility for elderly and handicapped voters, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.04.

Precincts, changes in boundaries, notification of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Election Districts and Polling Places, § 183-1-7-.01.

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 21-3-163 are included in the annotations for this Code

section.

Multiple polling places within precinct. — Two or more polling places within one election district (now precinct) would not be authorized by the Georgia Election Code. 1968 Op. Att'y Gen. No. 68-63.

Establishment of polling places. — The governing authority of a municipality is not required to establish a polling place in each district from which a candidate is elected to office, but must establish a polling place in each precinct in the municipality. 1985 Op. Att'y Gen. No. U85-14 (decided under former § 21-3-163).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 305.

C.J.S.
29 C.J.S., Elections, §§ 147, 331.

21-2-266. Polling places and advance voting locations — Use of public buildings; use of portable or movable facilities; unrestricted access to residential communities.

(a) In selecting polling places and advance voting locations, the superintendent of a county or the governing authority of a municipality shall select, wherever practicable and consistent with subsection (d) of Code Section 21-2-265, schoolhouses, municipal buildings or rooms, or other public buildings for that purpose. In selecting polling places and advance voting locations, the superintendent of a county or the governing authority of a municipality shall give consideration to the comfort and convenience those places to be selected will provide to both electors and poll officers. School, county, municipal, or other governmental authorities, upon request of the superintendent of a county or the governing authority of a municipality, shall make arrangements for the use of their property for polling places or advance voting locations; provided, however, that such use shall not substantially interfere with the use of such property for the purposes for which it is primarily intended.

(b) The superintendent of a county or the governing authority of a municipality shall have discretion to procure and provide portable or movable polling facilities of adequate size for any precinct; provided, however, that buses and other readily movable facilities shall only be used in emergencies declared by the Governor pursuant to Code Section 38-3-51 to supplement the capacity of the polling place where the emergency circumstance occurred.

(c) When the boundaries of a restricted access residential community are used as the boundaries for a precinct and a polling place is established within such restricted access residential community for the use of the voters in such precinct, such restricted access community and polling place shall be open to full and complete access by the public when such polling place is in use on the day of a general or special

primary or general or special election, including the time while poll officers are setting up the polling place prior to the opening of the polls, the time while the polls are open, and the time while the poll officers are completing the tabulation of the votes, election paperwork, and similar functions after the close of the polls. Such restricted access community and polling place shall also be open to full and complete access by the election superintendent, investigators of the State Election Board, all affected candidates and their representatives, and the public in the event of a recount or recanvass of the votes cast in any primary or election involving such precinct and polling place conducted at such precinct and polling place. In addition, in the event of a contest or challenge to the results of any primary or election involving such precinct and polling place, the election superintendent, upon reasonable notice and at reasonable times, may require such restricted access community and polling place to be open to full and complete access by the election superintendent, investigators of the State Election Board, and all affected candidates and their representatives for the purpose of determining the issues involved in such contest or challenge.

History.

Code 1933, § 34-706, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1978, p. 812, § 2; Ga. L. 1982, p. 1512, § 5; Ga. L. 1986, p. 348, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2013, p. 270, § 2/HB 87; Ga. L. 2021, p. 14, § 20/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (a), inserted "and advance voting locations," near the beginning of the first and second sentences and "or advance voting locations" near the middle of the third sentence, and added the proviso at the end of subsection (b).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

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"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

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cess as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

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Administrative rules and regulations.

Accessibility for elderly and handicapped voters, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.04.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Interference with primary use of public property. — Whether the use as a polling place will substantially interfere with primary use of public property is a decision which lies within the discretion of the judge of the probate court (now superintendent). 1965-66 Op. Att'y Gen. No. 65-88.

Use of school buildings as polling places. — The General Assembly intended that, wherever possible, school buildings be used as polling places. An affirmative duty is placed on school officials to make their property available for polling places. 1965-66 Op. Att'y Gen. No. 65-88.

National Guard Armories may be used as polling places in an election. Armories cannot be used, however, if the use would interfere in any way with the functions and purposes for which the armory is primarily intended. 1969 Op. Att'y Gen. No. 69-254.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 307.

C.J.S.

29 C.J.S., Elections, §§ 147, 331.

21-2-267. Polling places — Equipment; arrangement; storage.

(a) The governing authority of each county and municipality shall provide and the superintendent shall cause all rooms used as polling places to be provided with suitable heat and light and, in precincts in which ballots are used, with a sufficient number of voting compartments or booths with proper supplies in which the electors may conveniently mark their ballots, with a curtain, screen, or door in the upper part of the front of each compartment or booth so that in the marking thereof they may be screened from the observation of others. A curtain, screen, or door shall not be required, however, for the self-contained units used as voting booths in which direct recording electronic (DRE) voting units or electronic ballot markers are located if such booths have been designed so as to ensure the privacy of the elector. When practicable, every polling place shall consist of a single room, every part of which is within the unobstructed view of those present therein and shall be furnished with a guardrail or barrier closing the inner portion of such room, which guardrail or barrier shall

be so constructed and placed that only such persons as are inside such rail or barrier can approach within six feet of the ballot box and voting compartments, or booths, or voting machines, as the case may be. The ballot box and voting compartments or booths shall be so arranged in the voting room within the enclosed space as to be in full view of those persons in the room outside the guardrail or barrier. The voting machine or machines shall be placed in the voting rooms within the enclosed space so that, unless its construction shall otherwise require, the ballot labels on the face of the machine can be plainly seen by the poll officers when the machine is not occupied by an elector. In the case of direct recording electronic (DRE) voting units or electronic ballot markers, the devices shall be arranged in such a manner as to ensure the privacy of the elector while voting on such devices, to allow monitoring of the devices by the poll officers while the polls are open, and to permit the public to observe the voting without affecting the privacy of the electors as they vote.

(b) The superintendent, unless otherwise provided by law, may make such arrangements as he or she deems proper for the storage of election equipment in the various precincts of the county or municipality at such times of the year that it will not be used for election purposes and may fix reasonable compensation therefor.

History.
Ga. L. 1922, p. 97, § 1; Code 1933, § 34-1902; Code 1933, § 34-708, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1978, p. 1004, § 14; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1991, p. 999, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 25; Ga. L. 2005, p. 253, § 31/HB 244; Ga. L. 2019, p. 7, § 15/HB 316.

Administrative rules and regulations.
Accessibility for elderly and handicapped voters, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, § 183-1-6-.04.

JUDICIAL DECISIONS

Violation renders election void. — Violations of statutory requirements, including the requirement of this section that the voting booths have a screen, curtain, or door render an election void. Cox v. Williams, 216 Ga. 535, 117 S.E.2d 899, 1961 Ga. LEXIS 270 (1961).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 331, 337, 338.

21-2-268. Compensation for rent, heat, light, and janitorial services.

The superintendent or county or municipal governing authority shall fix the compensation for rent, heat, light, and janitorial services to be paid for the use of polling places for primaries and elections; provided,

however, that no compensation for rent, heat, or light shall be paid in the case of schoolhouses, municipal buildings or rooms, or other public buildings used as polling places.

History.
Code 1933, § 34-709, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 32/HB 244.

21-2-269. Construction of rooms for use as temporary polling places.

If, in any precinct, no proper polling place can be obtained, the superintendent shall cause to be constructed for such precinct a temporary room of adequate size to be used as a polling place.

History.
Code 1933, § 34-707, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.
Administrative rules and regulations.
Accessibility for elderly and handicapped voters, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.04.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 305, 306.

C.J.S.
29 C.J.S., Elections, § 331.

21-2-270. County-wide polling place in certain run-off primaries.

(a) This Code section shall apply to a run-off primary held in a county where:

(1) No run-off election is to be held for election of any candidate who is elected at a nonpartisan election;

(2) A run-off primary is to be held for nomination of one or more candidates who are nominated by one political party for election to the United States House of Representatives or to an office elected by the voters of the entire state; and no run-off primary is to be held for any candidate who is nominated by any other political party or any candidate who is nominated for election other than to the United States House of Representatives or to an office elected other than by the voters of the entire state; and

(3) Fewer than 1 percent of the county's registered voters voted at the primary of the political party by which a candidate or candidates are to be nominated at the run-off primary.

(b) In any case to which this Code section applies, only one polling place shall be required to be open in the county at the run-off primary;

and such polling place shall be the polling place for the precinct wherein the county courthouse is located. Any voter who is otherwise eligible to vote in such run-off primary shall be entitled to vote in said run-off primary at said single polling place. If the superintendent determines that a single polling place is insufficient, all polling places within the county shall be open.

(c) In any case in which only one polling place is to be utilized pursuant to this Code section, the superintendent shall cause an advertisement to be published once a week for two weeks immediately preceding the run-off primary. Such advertisement shall be in substantially the following form:

> "At the run-off primary to be held in _____ County on (date) for the nomination of candidates of the _____ Party, only one polling place shall be open and such polling place will be located at _____. Any voter who desires to vote in such run-off primary must vote at said polling place and no other polling places will be open for the run-off primary."

(d) The superintendent shall also cause a copy of such notice to be prominently posted at each polling place in the county on the date of the run-off primary and on each of the 14 days immediately preceding the date of the run-off primary. The superintendent shall also request the news media to provide news coverage of the fact that all persons desiring to vote at the run-off primary must vote at said single polling place.

History.
Code 1981, § 21-2-270, enacted by Ga. L. 1985, p. 1316, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 15.

Law reviews.
For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

ARTICLE 8

VOTING BY BALLOT

Cross references.
Penalties for offenses relating to ballots and ballot cards, §§ 21-2-566 and 21-2-574 et seq.

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 309 et seq.

21-2-280. Requirement as to conduct of primaries and elections by ballot; requirement as to use of official ballots only.

All primaries and elections in this state shall be conducted by ballot,

except when voting machines are used as provided by law. A ballot may be electronic or printed on paper. All ballots used in any primary or election shall be provided by the superintendent or municipal governing authority in accordance with this article, and only official ballots furnished by the superintendent or governing authority shall be cast or counted in any primary or election in any precinct in which ballots are used.

History.
Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1101, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2002, p. 598, § 2-2; Ga. L. 2005, p. 253, § 33/HB 244.

JUDICIAL DECISIONS

Omission of directions on ballots. — A trial court properly denied a losing candidate's petition to contest the election results of a mayoral election held in a town as the losing candidate failed to meet the burden of establishing that any misconduct, fraud, or irregularity occurred that placed the result of the election in doubt based on the county clerk signing the document reflecting the election results, instead of the election superintendent, and the clerk's failure to purge the voters list, which was not an obligation of the election supervisor anyway. The omission of the statutory language providing directions on how to cast a vote likewise did not necessitate a new election since the poll manager testified that the poll manager and other poll workers instructed each voter how to fill out the ballot and established that there was no concern or confusion by the voters regarding the ballot. Lewis v. O'Day, 284 Ga. 423, 667 S.E.2d 594, 2008 Ga. LEXIS 820 (2008).

Methods of voting. — O.C.G.A. § 21-2-280, by exempting electronic voting from the requirement that elections be conducted by ballot, does not violate Ga. Const. 1983, Art. II, Sec. I, Para. I because nothing in Ga. Const. 1983, Art. II, Sec. I, Para. I limits voting to some method or methods under which each voter indicates his or her choice or choices on a separate piece of paper issued to him or her for that purpose; it contemplates that the legislature shall provide a method, or methods, of voting at elections in such a way that not even those who count or tabulate the votes will know how any particular voter voted. Favorito v. Handel, 285 Ga. 795, 684 S.E.2d 257, 2009 Ga. LEXIS 486 (2009).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 283, 285.
C.J.S.
29 C.J.S., Elections, §§ 260, 262.
ALR.
Failure to make available to voters official ballots, or ballots conforming to requirements, as affecting validity of election of public officer, 165 A.L.R. 1263.

21-2-281. Voting by paper ballot when use of voting equipment impossible or impracticable.

In any primary or election in which the use of voting equipment is impossible or impracticable, for the reasons set out in Code Section

21-2-334, the primary or election may be conducted by paper ballot in the manner provided in Code Section 21-2-334.

History.
Code 1981, § 21-2-281; Ga. L. 1998, p. 295, § 1; Ga. L. 2002, p. 598, § 2-3.
Editor's notes.
This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8.

21-2-282. [Reserved] Voting by paper ballot when use of vote recorders impossible or impracticable.

History.
Ga. L. 1998, p. 295, § 1; repealed by Ga. L. 2002, p. 598, § 2-4, effective April 1, 2003.
Editor's notes.
Ga. L. 2002, p. 598, § 2-4 repealed and reserved this Code section, effective April 1, 2003.

21-2-283. Printing and safekeeping of ballots and labels by superintendent.

In any primary or election, the superintendent or municipal governing authority shall cause all the ballots and ballot labels to be printed accurately and in the form prescribed by this chapter, and the superintendent or municipal governing authority shall be responsible for the safekeeping of the same while in his or her or its possession or that of his or her or its agent. The superintendent or municipal governing authority shall keep a record of the number of official ballots printed and furnished to each precinct at each primary and election and the number of stubs, unused ballots, and canceled ballots subsequently returned therefrom.

History.
Code 1933, § 34-1109, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 34/HB 244; Ga. L. 2006, p. 69, § 1/SB 467.
Cross references.
Penalty for offenses by printers of ballots, § 21-2-594.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 285 et seq., 298 et seq.
C.J.S.
29 C.J.S., Elections, § 264 et seq.

21-2-284. Form of official primary ballot; attestation regarding receiving value in exchange for vote.

(a) In each primary separate official ballots shall be prepared for the political party holding the primary. At the top of each ballot shall be printed in prominent type the words "OFFICIAL PRIMARY BALLOT OF _____ PARTY FOR," followed by the name

and designation of the precinct for which it is prepared and the name and date of the primary.

(b) The State Election Board shall by rule and regulation determine the appropriate wording for directions as to how a vote should be cast on each type of voting equipment used in the state and how a new ballot should be issued when a ballot is spoiled.

(c) Immediately under the directions, the names of all candidates who have qualified with the party in accordance with this chapter and party rules and who have been certified to the superintendent or Secretary of State as having so qualified shall be printed on the ballots, except unopposed candidates in municipal primaries where the municipal charter or ordinance does not prohibit the omission of such candidates' names from the ballot. The names of the candidates shall in all cases be arranged under the title of the office for which they are candidates and be printed thereunder in alphabetical order. The incumbency of a candidate seeking party nomination for the public office he or she then holds shall be indicated on the ballots. Under the title of each office shall be placed a direction as to the number of candidates to be voted for.

(d) If at any general primary a political party shall submit to its members any matter or question to be voted upon, the party shall by the deadline for certifying candidates for the primary election certify the wording of said question to the superintendent, if to be voted on by one county only, or to the Secretary of State, if to be voted on by more than one county; and the superintendent or Secretary of State shall have such language printed on the ballot form. To the left of each question there shall be placed the words "Yes" and "No" together with appropriate squares to the left of each for the convenient insertion of a cross (X) or check (√) mark. If at any municipal primary a political party shall submit to its members any matter or question to be voted upon, the party shall also have printed on the ballots the necessary language to guide the elector in the expression of his or her choice as to such matter or question.

(e) Each ballot shall have printed thereon the following:

> "I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

(f) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require.

History. Code 1933, § 34-1102, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 8; Ga. L. 1970, p. 347, § 14; Ga. L.

1970, p. 383, § 3; Ga. L. 1977, p. 1053, § 5; Ga. L. 1979, p. 624, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1984, p. 1, § 7; Ga. L. 1996, p. 101, § 3; Ga. L. 1997, p. 590, § 27; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 9, 33; Ga. L. 2002, p. 598, § 2-5; Ga. L. 2010, p. 914, § 14/HB 540; Ga. L. 2021, p. 14, § 20A/SB 202.

The 2021 amendment, effective March 25, 2021, inserted "name and" near the middle of the second sentence in subsection (a).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee bal-

lots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.06.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For comment, "Awakening a Slumbering Giant: Georgia's Judicial Selection System After *White* and *Weaver*," see 56 Mercer L. Rev. 1035 (2005).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Authority of state to regulate elections. — States have broad authority, absent valid congressional legislation, to establish rules regulating the manner of

conducting both primary and final elections. Williamson v. Fortson, 376 F. Supp. 1300, 1974 U.S. Dist. LEXIS 8007 (N.D. Ga. 1974).

OPINIONS OF THE ATTORNEY GENERAL

When O.C.G.A. §§ 21-2-284 and 21-2-285 control questions of form of ballot cards. — It was reasonable that former Code 1933, §§ 34-1102 and 1103 (see O.C.G.A. § 21-2-284 and 21-2-285), prescribing form for paper ballots, control questions of form of ballot cards where former Code 1933, § 1223 (former § 21-2-357), governing ballot cards, dis not expressly provide an answer to the question raised. 1981 Op. Att'y Gen. No. 81-68.

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51.

Purpose of incumbency designation. — The purpose of the requirement of incumbency designation established by this section was to provide factual information to a voter which is relevant to the choice which the voter makes in voting and which aids the voter in that decision. 1976 Op. Att'y Gen. No. 76-5.

This section identified on the ballot the candidate responsible for the current conduct of the office involved, permitting the voter to express the voter's approval or disapproval of that conduct. 1976 Op. Att'y Gen. No. 76-5.

This section required incumbency designation of the present officeholder, regardless of whether the officeholder was previously elected or was appointed to fill a vacancy. 1976 Op. Att'y Gen. No. 76-5.

If two incumbent county commissioners qualify for the same post they must both be listed as "incumbents" on the primary ballot. 1974 Op. Att'y Gen. No. U74-57.

Incumbent need not be listed if not candidate for that office. — It is not necessary to designate the incumbent on a primary ballot if the incumbent is not a candidate in that party's primary for the office the incumbent holds. 1970 Op. Att'y Gen. No. 70-132.

When elected commissioner of labor withdrew prior to taking oath of office and another person was appointed to serve until the next general election in 1992, the proper ballot caption for the office for the 1992 primary and general elections was: "For Commissioner of Labor (To Succeed Al Scott for the Unexpired Term of Joe Tanner, withdrawn)". 1991 Op. Att'y Gen. No. 91-16.

Candidates for both special election and general election may be listed on same ballot. — Former Code 1933, §§ 34-1102 and 34-1103 (see now O.C.G.A. §§ 21-2-284 and 21-2-285) allow both special election candidates and general election candidates to be listed on the same ballot so long as the candidates have qualified in accordance with the requirements of the Election Code and the elections are held on the same day; provided, however, that all persons in that election district (now precinct) who will receive the ballot are eligible to vote in both the general and the special elections. 1970 Op. Att'y Gen. No. 70-115.

Prepunching, in addition to printing, of ballot cards used in conjunction with vote recorders. — Ballot cards used in conjunction with vote recorders may not be prepunched to designate election districts (now precincts) or political parties in lieu of printing such information on cards, but may be so prepunched in addition to printing such information on cards. 1981 Op. Att'y Gen. No. 81-68.

When election district (now precinct) and political party are designated by printing, such designations may be prepunched to obviate confusion and concern among voters; however, it would be wise to also include explanatory language to the effect that the "ballot has been prepunched only so as to indicate information printed immediately above." 1981 Op. Att'y Gen. No. 81-68.

Straw polls. — Public funds may not be expended for the purpose of conducting a straw poll or public opinion referendum absent statutory authority. 1990 Op. Att'y Gen. No. U90-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 285 et seq.
C.J.S.
29 C.J.S., Elections, §§ 264, 267, 271, 272, 273.
ALR.
Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballots of names of candidates, 78 A.L.R. 398.
Name or form of name to be used in designating candidate on primary or election ballot, 93 A.L.R. 911.
Validity, construction, and application of state statutory requirements concerning placement of independent candidate for President of the United States on ballot, 33 A.L.R.6th 513.
Validity, construction, and application of state requirements for placement of independent candidates for United States Senate on ballot, 59 A.L.R.6th 111.

21-2-284.1. Nonpartisan municipal primary ballot form.

In the case of nonpartisan municipal primaries, the form of the official nonpartisan primary ballot shall conform insofar as practicable to the form of the official primary ballot as detailed in Code Section 21-2-284 including the printing of the name and designation of the precinct on the top of the ballot, except that:

(1) The following shall be printed at the top of each ballot in prominent type:

"OFFICIAL NONPARTISAN PRIMARY BALLOT OF

_____

(Name of Municipality)";

(2) There shall be no name or designation of any political organization nor any words, designation, or emblems descriptive of a candidate's political affiliation printed under or after any candidate's name which is printed on the ballot; and

(3) The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot.

History.
Code 1981, § 21-2-284.1, enacted by Ga. L. 1983, p. 1190, § 11; Ga. L. 1984, p. 133, § 1; Ga. L. 1996, p. 145, § 14; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 16; Ga. L. 2002, p. 598, § 2-6; Ga. L. 2005, p. 253, § 35/HB 244; Ga. L. 2021, p. 14, § 20B/SB 202.
The 2021 amendment, effective March 25, 2021, inserted "including the printing of the name and designation of the precinct on the top of the ballot," near the end of the introductory paragraph.
Editor's notes.
Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.
Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"
Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:
"(1) Following the 2018 and 2020 elections, there was a significant lack of con-

fidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some coun-

ties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 285 et seq.

C.J.S.

29 C.J.S., Elections, §§ 267, 271, 272, 273.

21-2-285. Form of official election ballot; attestation on receipt of benefit in exchange for vote; when an election is not required.

(a) At the top of each ballot for an election shall be printed in prominent type the words "OFFICIAL BALLOT," followed by the name

and designation of the precinct for which it is prepared and the name and date of the election.

(b)(1) Directions that explain how to cast a vote and how to obtain a new ballot after one is spoiled shall appear immediately under this caption on a ballot presenting the names of candidates for election to office as specified by the rules and regulations of the State Election Board.

(2) Marks made in violation of these directions shall be disregarded in the counting of the votes cast. The names of persons inserted on the ballot by the elector shall be written only within the write-in space provided and the insertion of such names outside such column or by the use of a sticker, paster, stamp, or other printed or written matter is prohibited.

(c) Immediately under the directions, the names of all candidates who have been nominated in accordance with the requirements of this chapter shall be printed on the ballot and the names of the candidates shall in all cases be arranged under the titles of the respective offices they are seeking. In a primary or special election, said names shall be arranged alphabetically by last name under the title of the office. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot. In a general election, the names of candidates who are nominees of a political party shall be placed under the name of their party. The columns of political parties shall be printed on the ballot, beginning on the left side thereof, and shall be arranged from left to right in the descending order of the totals of votes cast for candidates of the political parties for Governor at the last gubernatorial election. The columns of parties having no candidate for Governor on the ballot at the last gubernatorial election shall be arranged alphabetically according to the party name to the right of the columns of the parties so represented. The columns of political bodies shall be arranged alphabetically according to the body name to the right of the party columns. The names of all independent candidates shall be printed on the ballot in a column or columns under the heading "Independent," which shall be placed to the right of the political body columns. In the case of two or more independent candidates seeking the same office, their names shall be arranged under the title of the office in alphabetical order. The names of candidates seeking the same office shall be printed horizontally opposite one another in their respective columns, and such columns shall be of sufficient length to permit such an arrangement. To the right of the independent column or columns shall be printed a blank column sufficient for the insertion of write-in votes.

(d) Unless a candidate has filed with his or her nominating petition a certificate from a political party or body attesting that such candidate

is the nominee of such party by virtue of having been nominated in a duly constituted party convention, the candidate's name shall appear on the ballot under the independent column.

(e) When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party or body and the names of the candidates of the party or body for the offices of President and Vice President of the United States. The individual names or the nominees of each political party or body for such offices shall be posted at each polling place arranged alphabetically under the names of the candidates of the party or body for President and Vice President of the United States. A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.

(f) When proposed constitutional amendments or other questions are submitted to a vote of the electors, each amendment or other question so submitted may be printed upon the ballot following the groups of candidates for the various offices. Proposed constitutional amendments so submitted shall be printed in the order determined by the Constitutional Amendments Publication Board and in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include the short title or heading provided for in subsection (c) of Code Section 50-12-101. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot and any local questions so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the superintendent.

(g) When proposed questions are submitted to a vote of municipal electors, each question so submitted may be printed upon the ballot to the right of or below the groups of candidates for the various offices.

(h) Each ballot shall have printed thereon the following:

> "I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

(i) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require.

(j) Any other provision of law to the contrary notwithstanding, in the

event there is no opposed candidate in a precinct in a general or special municipal election, no election shall be held in such precinct unless a write-in candidate has qualified as provided by law or unless there are issues to be submitted to the electorate within a precinct.

(k) When, pursuant to subsection (j) of this Code section, no election is to be conducted, the municipality shall provide notice reasonably calculated to inform the affected electorate that no election is to be conducted. Each such unopposed candidate shall be deemed to have voted for himself or herself. The superintendent shall certify such unopposed candidate as elected in the same manner as he or she certifies other candidates as elected pursuant to Code Section 21-2-502.

History.

Ga. L. 1922, p. 97, §§ 2, 3; Code 1933, §§ 34-1903, 34-1904; Ga. L. 1941, p. 324, § 1; Ga. L. 1948, Ex. Sess., p. 3, § 1; Ga. L. 1958, p. 208, § 6; Ga. L. 1962, p. 98, § 1; Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1103, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 226, § 1; Ga. L. 1968, p. 851, § 1; Ga. L. 1969, p. 329, § 12; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 772, § 3; Ga. L. 1986, p. 1538, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 279, § 2; Ga. L. 1997, p. 590, § 28; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 10, 34; Ga. L. 2001, p. 269, § 17; Ga. L. 2002, p. 598, § 2-7; Ga. L. 2005, p. 253, § 36/HB 244; Ga. L. 2012, p. 995, § 22/SB 92; Ga. L. 2021, p. 14, § 20C/SB 202.

The 2021 amendment, effective March 25, 2021, inserted "name and" near the middle of subsection (a).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting unifor-

mity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General As-

sembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.06.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Authority of states to regulate elections. — States have broad authority, absent valid congressional legislation, to establish rules regulating the manner of conducting both primary and final elections. Williamson v. Fortson, 376 F. Supp. 1300, 1974 U.S. Dist. LEXIS 8007 (N.D. Ga. 1974).

There are many types of information which could serve to reduce voter confusion if they were included in the ballot. The determination of what should be included is a state function. Williamson v. Fortson, 376 F. Supp. 1300, 1974 U.S. Dist. LEXIS 8007 (N.D. Ga. 1974).

Prohibition of use of stamps or stickers not unconstitutional. — The prohibition of the use of stamps or stickers is not unconstitutional on its face. Morris v. Fortson, 261 F. Supp. 538, 1966 U.S. Dist. LEXIS 7571 (N.D. Ga. 1966).

Use of incorrect terminology held mere irregularity. — See Buttrill v. Thomas, 126 Ga. App. 498, 191 S.E.2d 119, 1972 Ga. App. LEXIS 1194 (1972).

Omission of directions on ballots. — A trial court properly denied a losing candidate's petition to contest the election results of a mayoral election held in a town as the losing candidate failed to meet the burden of establishing that any misconduct, fraud, or irregularity occurred that placed the result of the election in doubt based on the county clerk signing the document reflecting the election results, instead of the election superintendent, and the clerk's failure to purge the voters list, which was not an obligation of the election supervisor anyway. The omission of the statutory language providing directions on how to cast a vote likewise did not necessitate a new election since the poll manager testified that the poll manager and other poll workers instructed each voter how to fill out the ballot and established that there was no concern or confusion by the voters regarding the ballot. Lewis v. O'Day, 284 Ga. 423, 667 S.E.2d 594, 2008 Ga. LEXIS 820 (2008).

Lawsuit seeking name placed on ballot properly dismissed. — Trial court properly dismissed a nominee's lawsuit seeking to have the nominee's name placed upon the ballot for the 2016 general election as an independent candidate for President of the United States because the notices of candidacy were submitted 11 days after the deadline set forth in O.C.G.A. § 21-2-132(d)(1) and the nominee failed to have enough signatures verified; thus, the nominee was not entitled to have the nominee's name placed on the ballot. De La Fuente v. Kemp, 300 Ga. 79, 793 S.E.2d 89, 2016 Ga. LEXIS 712 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34A-1004 and 34-1323 are included in the annotations for this Code section.

Effect where election otherwise re-

quired by law. — A special municipal election, otherwise required by law, must be conducted notwithstanding the existence of the conditions set forth in this section. 1980 Op. Att'y Gen. No. U80-15 (decided under former Code 1933, § 34A-1004).

When no name for a particular race shall appear on ballot. — Where neither a party nominee nor a write-in candidate files notice of intention of candidacy in opposition to an already qualified candidate in a municipal general or special election, then no name for that race shall appear on the ballot. 1982 Op. Att'y Gen. No. U82-10 (decided under former Code 1933, § 34A-1004).

Controlling sections or questions of form of ballot cards. — It was reasonable that former Code 1933, §§ 34-1102 and 34-1103 (see now O.C.G.A. §§ 21-2-284 and 21-2-285) prescribing form for paper ballots, control questions of form of ballot cards when former Code 1933, § 34-1223 (formerly § 21-2-357), governing ballot cards, did not expressly provide an answer to the question raised. 1981 Op. Att'y Gen. No. 81-68.

No candidate for office at general election. — When no candidate of either party nor an independent qualifies for an office to be filled at a general election, the title to the office should be printed on the ballot and then a note should be written under the title in each party's column that there is no candidate for that office. 1968 Op. Att'y Gen. No. 68-411.

Restrictions on use of stickers, pasters, and stamps. — Ga. L. 1933, § 34-1323 (see now O.C.G.A. § 21-2-438) does not remove the restrictions on the use of stickers, pasters, stamps, etc., as contained in former Code 1933, § 34-1103 (see now O.C.G.A. § 21-2-285). 1976 Op. Att'y Gen. No. U76-45 (decided under former Code 1933, § 34-1323).

Prepunching, in addition to printing, of ballot cards used in conjunction with vote recorders. — Ballot cards used in conjunction with vote recorders may not be prepunched to designate election districts (now precincts) or political parties in lieu of printing such information on cards, but may be so prepunched in addition to printing such information on cards. 1981 Op. Att'y Gen. No. 81-68.

When precinct and political party are designated by printing, such designations may be prepunched to obviate confusion and concern among voters; however, it would be wise to also include explanatory language to the effect that the "ballot has been prepunched only so as to indicate information printed immediately above." 1981 Op. Att'y Gen. No. 81-68.

Abbreviations in write-in votes. — An elector, when casting a write-in vote, may use abbreviations in the title of the office if the write-in office has been abbreviated in such a way that the elector has indicated clearly and without question the office for which the elector voted. 1968 Op. Att'y Gen. No. 68-434.

Poll officers are required to count as valid any ballot on which an elector has indicated clearly and without question the candidate for whom the elector desires to cast a vote, notwithstanding the fact the elector has not marked the elector's ballot in accordance with the Election Code. 1976 Op. Att'y Gen. No. U76-45.

Misspelling of candidate's name. — In those instances where the elector's intent can clearly and unquestionably be ascertained, the elector's vote should be counted even where the elector has not spelled the candidate's name exactly as recorded by the candidate. 1968 Op. Att'y Gen. No. 68-411.

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51.

When elected commissioner of labor withdrew prior to taking oath of office and another person was appointed to serve until the next general election in 1992, the proper ballot caption for the office for the 1992 primary and general elections was: "For Commissioner of Labor (To Succeed Al Scott for the Unexpired Term of Joe Tanner, withdrawn)". 1991 Op. Att'y Gen. No. 91-16.

Candidates for both special election and general election may be listed on same ballot. — Former Code

1933, §§ 34-1102 and 34-1103 (see now O.C.G.A. §§ 21-2-284 and 21-2-285) allow both special election candidates and general election candidates to be listed on the same ballot so long as the candidates have qualified in accordance with the requirements of the Election Code and the elections are held on the same day; provided, however, that all persons in that election district (now precinct) who will receive the ballot are eligible to vote in both the general and the special election. 1970 Op. Att'y Gen. No. 70-115.

Straw polls. — Public funds may not be expended for the purpose of conducting a straw poll or public opinion referendum absent statutory authority. 1990 Ga. Op. Att'y Gen. U90.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 285 et seq.

C.J.S.
29 C.J.S., Elections, §§ 264, 267, 271, 272, 273.

21-2-285.1. Nonpartisan elections ballot form; run-off election; declaration of prevailing candidate as duly elected.

The names of all candidates for offices which the General Assembly has by general law or local Act provided for election in a nonpartisan election shall be printed on each official primary ballot; and insofar as practicable such offices to be filled in the nonpartisan election shall be separated from the names of candidates for party nomination to other offices by being listed last on each ballot, with the top of that portion of each official primary ballot relating to the nonpartisan election to have printed in prominent type the words "OFFICIAL NONPARTISAN ELECTION BALLOT." In addition, there shall be a ballot that contains just the official nonpartisan election ballot available for electors who choose not to vote in a party primary. Such ballot shall have printed at the top the name and designation of the precinct. Directions that explain how to cast a vote, how to write in a candidate, and how to obtain a new ballot after the elector spoils his or her ballot shall appear immediately under the caption, as specified by rule or regulation of the State Election Board. Immediately under the directions, the name of each such nonpartisan candidate shall be arranged alphabetically by last name under the title of the office for which they are candidates and be printed thereunder. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot. No party designation or affiliation shall appear beside the name of any candidate for nonpartisan office. An appropriate space shall also be placed on the ballot for the casting of write-in votes for such offices. In the event that no candidate in such nonpartisan election receives a majority of the total votes cast for such office, there shall be a nonpartisan election runoff between the candidates receiving the two highest numbers of votes; and the names of such candidates shall be placed on the official ballot at the general primary runoff in the same

manner as prescribed in this Code section for the nonpartisan election and there shall be a separate official nonpartisan election run-off ballot for those electors who do not choose or are not eligible to vote in the general primary runoff. In the event that only nonpartisan candidates are to be placed on a run-off ballot, the form of the ballot shall be as prescribed by the Secretary of State or election superintendent in essentially the same format as prescribed for the nonpartisan election. Except as provided in subsection (g) of Code Section 21-2-134, the candidate having a majority of the votes cast in the nonpartisan election or the candidate receiving the highest number of votes cast in the nonpartisan election runoff shall be declared duly elected to such office.

History.

Code 1981, § 21-2-285.1, enacted by Ga. L. 1983, p. 1190, § 12; Ga. L. 1984, p. 133, § 1; Ga. L. 1994, p. 279, § 3; Ga. L. 1996, p. 145, § 15; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 8; Ga. L. 2001, p. 269, § 18; Ga. L. 2002, p. 598, § 2-8; Ga. L. 2005, p. 253, § 37/HB 244; Ga. L. 2011, p. 678, § 5/HB 158; Ga. L. 2021, p. 14, § 21/SB 202.

The 2021 amendment, effective July 1, 2021, added the present third sentence, substituted "run-off" for "runoff" near the end of the ninth sentence, and substituted "Except as provided in subsection (g) of Code Section 21-2-134, the candidate" for "The candidate" at the beginning of the eleventh sentence.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const 1983, Art. VI, Sec. VII, Para. I.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

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"(6) Some counties in 2020 received significant infusions of grant funding for

election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is

severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51.

RESEARCH REFERENCES

ALR.

Validity of runoff voting election methodology, 67 A.L.R.6th 609.

21-2-286. Printing specifications, numbering, and binding of ballots.

(a) In any primary or election, the superintendent shall cause the ballots to be printed in the form prescribed by this chapter.

(b)(1) Paper ballots other than those printed for optical scanning voting systems shall be at least six inches long and four inches wide and shall have a margin extending beyond any printing thereon. They shall be printed with the same kind of type, which shall not be smaller than the size known as "brevier" or "eight-point body," upon white paper of uniform quality, without any impression or mark to distinguish one from another, and with sufficient thickness to prevent the printed matter from showing through, except that ballots being used in primaries held by more than one party may be of different colors or may have colored stripes or blocks to distinguish the ballots if the parties so agree. Each ballot shall be attached to a name stub, and all the ballots for the same precinct shall be bound together in books of 25, 50, or 100, in such manner that each ballot may be detached from its stub and removed separately. The ballots for each party to be used at a primary shall be bound separately. The name stubs of the ballots shall be consecutively numbered; and, in the case of primary ballots, the number shall be preceded by an initial or

abbreviation designating the party name. The number and initial or abbreviation which appears upon the stub shall also be printed in the upper portion of the front of the ballot, separated from the remainder of the ballot by a horizontal perforated line so as to constitute a number strip and so prepared that the upper portion of the front of the ballot containing the number may be detached from the ballot before it is deposited in the ballot box. The number strip on the ballot shall also have the following words printed thereon: "Tear off before depositing ballot in ballot box."

(2) Ballots for direct recording electronic voting systems shall be designed as prescribed by the Secretary of State to ensure easy reading by electors.

(3) Ballots printed by an electronic ballot marker shall be designed as prescribed by the Secretary of State to ensure ease of reading by electors, provided that each ballot shall have the name and designation of the precinct printed at the top.

History.

Ga. L. 1941, p. 324, § 1; Code 1933, § 34-1104, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 13; Ga. L. 1982, p. 1512, § 5; Ga. L. 1984, p. 1, § 9; Ga. L. 1987, p. 1360, § 13; Ga. L. 1998, p. 295, § 1; Ga. L. 2002, p. 598, § 2-9; Ga. L. 2003, p. 517, § 26; Ga. L. 2019, p. 7, § 16/HB 316; Ga. L. 2021, p. 14, § 21A/SB 202.

The 2021 amendment, effective March 25, 2021, added the proviso at the end of paragraph (b)(3).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 285 et seq.

C.J.S.

29 C.J.S., Elections, §§ 264 et seq., 345 et seq.

21-2-287. Form of absentee ballot.

The form for the absentee ballot shall be in substantially the same form as the official ballots used in the precincts, except it shall be printed with only the name stub and without a number strip and shall have the precinct name and designation printed or stamped thereon.

History.

Code 1933, § 34-1104, enacted by Ga. L. 1970, p. 347, § 15; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 27; Ga. L. 2021, p. 14, § 21B/SB 202.

The 2021 amendment, effective March 25, 2021, substituted "and shall have the precinct name and designation" for "and may have the precinct designation" near the end of this Code section.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

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"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county.

More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours

of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51.

21-2-288. Procedure as to printing of ballots when candidates for same nomination or office have same or similar names.

If two or more candidates for the same nomination or office shall have the same or similar names, the Secretary of State, in the case of federal or state offices, the superintendent of elections, in the case of county offices, or the official with whom such candidates qualify, in the case of municipal elections, shall print or cause to be printed the residence of all candidates for such nomination or office on the ballot under their names. The designated official shall determine whether the names of the candidates are of such a similar nature as to warrant printing the residence of all candidates for that office on the ballot; and the decision of the designated official shall be conclusive.

History.

Code 1933, § 34-1105, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1980, p. 1256, § 3; Ga. L. 1982, p. 1292, § 8; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, §§ 298, 299.

C.J.S.

29 C.J.S., Elections, §§ 268, 269, 270.

21-2-289. Printing on ballots of names of substitute candidates.

As soon as any substitute candidate has been duly nominated by his or her political party or body pursuant to Code Section 21-2-134, at any time prior to the day on which the printing of ballots is started, his or her name shall be substituted in place of that of the candidate who has died, withdrawn, or been disqualified.

History.
Ga. L. 1948, Ex. Sess., p. 3, § 1; Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1106, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 265, 296, 297.

C.J.S.
29 C.J.S., Elections, § 282.

21-2-290. Superintendent to provide number of ballots equal to number of registered electors in precinct.

The superintendent shall provide, for each precinct in which a primary or election is to be held, a sufficient number of ballots equal to the number of active registered electors.

History.
Code 1933, § 34-1107, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 14; Ga. L. 1976, p. 469, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 9.

Law reviews.
For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).
For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 284.

C.J.S.
29 C.J.S., Elections, § 263.

21-2-291. Procedure as to unopposed candidates.

Any other provision of law to the contrary notwithstanding, in the event there is no opposed candidate in a precinct in a special or general election, no special or general election shall be held in such precinct unless a write-in candidate has qualified as provided by law or unless there are issues to be submitted to the electorate. Except as provided in Code Section 21-2-158, each such unopposed candidate shall be deemed to have voted for himself or herself. Where feasible, the superintendent shall provide notice reasonably calculated to inform the affected electorate that no special or general election is to be conducted. The superintendent shall certify such unopposed candidate as elected in the same manner as he or she certifies other candidates as elected pursuant to Code Section 21-2-493.

History.
Code 1933, § 34-1112, enacted by Ga. L. 1978, p. 1979, § 1; Ga. L. 1984, p. 1, § 10; Ga. L. 1987, p. 977, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 21; Ga. L. 2001, Ex. Sess., p. 325, § 5; Ga. L. 2010, p. 914, § 15/HB 540.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 285 et seq.

C.J.S.
29 C.J.S., Elections, §§ 264, 267, 271, 272, 273.

21-2-292. Duty of superintendent to have forms of ballots on file for public inspection prior to election.

The superintendent shall have on file in his or her office open to public inspection, at least five days prior to the day of holding each primary and election, forms of the ballots, with the names and such statements and notations printed thereon as may be required by this chapter. Such forms shall be used in each precinct within the county or municipality.

History.
Code 1933, § 34-1108, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 284, 285.

C.J.S.
29 C.J.S., Elections, §§ 261, 263.

21-2-293. Correction of mistakes and omissions on ballot.

(a) If the election superintendent discovers that a mistake or omission has occurred in the printing of official ballots or in the programming of the display of the official ballot on DRE voting equipment or electronic ballot markers for any primary or election, the superintendent is authorized on his or her own motion to take such steps as necessary to correct such mistake or omission if the superintendent determines that such correction is feasible and practicable under the circumstances; provided, however, that the superintendent gives at least 24 hours' notice to the Secretary of State and any affected candidates of the mistake or omission prior to making such correction.

(b) When it is shown by affidavit that a mistake or omission has occurred in the printing of official ballots or in the programming of the display of the official ballot on DRE voting equipment or electronic ballot markers for any primary or election, the superior court of the proper county may, upon the application of any elector of the county or municipality, require the superintendent to correct the mistake or omission or to show cause why he or she should not do so.

History.
Code 1933, § 34-1110, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2017, p. 2, § 1/HB 42; Ga. L. 2017, p. 697, § 14/HB 268; Ga. L. 2019, p. 7, § 17/HB 316.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 300, 301.

C.J.S.
29 C.J.S., Elections, § 285 et seq.

21-2-294. Responsibility of superintendent for recording number of ballots furnished and number of stubs, unused ballots, and canceled ballots returned.

The superintendent shall keep a record of the number of official ballots printed and furnished to each precinct at each primary and election and of the number of stubs, unused ballots, and canceled ballots subsequently returned therefrom.

History.
Code 1933, § 34-1111, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 284.

C.J.S.
29 C.J.S., Elections, § 263.

ARTICLE 8A

STATE-WIDE VOTING EQUIPMENT

21-2-300. Provision of new voting equipment by state; uniform system for all elections to be conducted with the use of scanning ballots marked by electronic ballot markers; pilot programs; county responsibilities; education; county and municipal contracts for equipment.

(a)(1) The equipment used for casting and counting votes in county, state, and federal elections shall be the same in each county in this state and shall be provided to each county by the state, as determined by the Secretary of State.

(2) As soon as possible, once such equipment is certified by the Secretary of State as safe and practicable for use, all federal, state, and county general primaries and general elections as well as special primaries and special elections in the State of Georgia shall be conducted with the use of scanning ballots marked by electronic ballot markers and tabulated by using ballot scanners for voting at the polls and for absentee ballots cast in person, unless otherwise authorized by law; provided, however, that such electronic ballot markers shall produce paper ballots which are marked with the elector's choices in a format readable by the elector.

(3) The state shall furnish a uniform system of electronic ballot markers and ballot scanners for use in each county as soon as possible. Such equipment shall be certified by the United States Election Assistance Commission prior to purchase, lease, or acquisition. At its own expense, the governing authority of a county may purchase, lease, or otherwise acquire additional electronic ballot markers and ballot scanners of the type furnished by the state, if the governing authority so desires. Additionally, at its own expense, the governing authority of a municipality may choose to acquire its own electronic ballot markers and ballot scanners by purchase, lease, or other procurement process.

(4) Notwithstanding any provision of law to the contrary, the Secretary of State is authorized to conduct pilot programs to test and evaluate the use of electronic ballot markers and ballot scanners in primaries and elections in this state.

(b) Each county shall, prior to being provided with voting equipment by the state, provide polling places that are adequate for the operation of such equipment including, if necessary, the placement within the polling places of a sufficient number of electrical outlets and telephone lines.

(c) Each county shall, prior to being provided with voting equipment by the state, provide or contract for adequate technical support for the installation, set up, and operation of such voting equipment for each primary, election, and special primary and special election as the Secretary of State shall determine by rule or regulation.

(d) The Secretary of State shall be responsible for the development, implementation, and provision of a continuing program to educate voters, election officials, and poll workers in the proper use of such voting equipment. Each county shall bear the costs, including transportation, subsistence, and lodging, incurred by its election and registration officials in attending courses taught by or arranged by the Secretary of State for instruction in the use of the voting equipment.

(e)(1) Counties shall be authorized to contract with municipal governments for the use of such voting equipment in municipal elections under terms and conditions specified by the Secretary of State to assure that the equipment is properly used and kept secure.

(2) Notwithstanding the provisions of Code Section 21-2-45, counties may not levy a fee for use of state owned voting equipment but may require municipalities to reimburse the county for the actual expenses related to the election or elections that are subject to the county and municipal contract.

History.
Code 1981, § 21-2-300, enacted by Ga. L. 2001, p. 269, § 19; Ga. L. 2003, p. 517, § 28; Ga. L. 2019, p. 7, § 18/HB 316.
Law reviews.
For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.
C.J.S.
29 C.J.S., Elections, §§ 337, 338, 527 et seq.

21-2-301. [Repealed] Pilot program; testing and evaluation of electronic voting systems; creation of Twenty-first Century Voting Commission.

History.
Code 1981, § 21-2-301, enacted by Ga. L. 2001, p. 269, § 19; Ga. L. 2003, p. 151, § 1; repealed by Ga. L. 2003, p. 517, § 29, effective July 1, 2003.

ARTICLE 9

VOTING MACHINES AND VOTE RECORDERS GENERALLY

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 25.
26 Am. Jur. 2d, Elections, § 309 et seq.
Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

Part 1

General Provisions

Cross references.
Instruction of poll officers in use of voting machines and vote recorders, § 21-2-99.
Penalties for offenses relating to ballots and ballot cards, §§ 21-2-566 and 21-2-574 et seq.

21-2-310. Definitions.

As used in this article, the term:

(1) "Candidate counters" or "question counters" means the counters which numerically register the votes cast for candidates and on questions, respectively.

(2) "Diagram" means an illustration of the official ballot showing the names of the parties, bodies, offices, and candidates and state-

ments of the questions, in their proper places, together with the voting devices therefor.

(3) "Protective counter" means a counter or protective device or devices that will register each time the machine is operated and shall be constructed and so connected that it cannot be reset, altered, or operated except by operating the machine.

(4) "Public counter" means a counter or other device which shall, at all times, publicly indicate how many times the machine has been voted on during an election.

(5) "Registering counter" shall not include a protective counter.

(6) "Vote indicator" means those devices with which votes are indicated for candidates or for or against questions.

History.
Code 1933, § 34-1201, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1984, p. 1087, § 1; Ga. L. 1990, p. 243, § 7; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

PART 2

VOTING MACHINES

RESEARCH REFERENCES

ALR.
Constitutionality of statutes providing for use of voting machines, 66 A.L.R. 855.

21-2-320. Power of municipal governing authority to authorize use of and to procure voting machines.

The governing authority of any municipality may at any regular meeting or at a special meeting called for the purpose, by a majority vote, authorize and direct the use of voting machines for recording and computing the vote at all elections held in the municipality; and thereupon the governing authority shall purchase, lease, rent, or otherwise procure voting machines conforming to the requirements of this part.

History.
Code 1933, § 34-1202, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 38/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.
C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.
ALR.
Constitutionality of statutes providing for use of voting machines, 66 A.L.R. 855.

21-2-321. Referendum on question of use of voting machines.

(a) The governing authority of any municipality which conducts elections by paper ballot may, upon its own motion, submit to the electors of the municipality, at any election, the question: "Shall voting machines be used in _____ ?"

(b) The governing authority of any municipality which conducts elections by paper ballot, upon the receipt of a petition signed by at least 10 percent of the electors who voted in such municipality at the preceding general election, shall, at the next election occurring at least 45 days thereafter, submit to the electors of such municipality the question: "Shall voting machines be used in _____ ?"

(c) The governing authority shall cause such question to be printed upon the ballots to be used at the election in the form and manner provided by the laws governing general elections.

(d) The election on such question shall be held at the places, during the hours, and under the regulations provided by law for holding general elections and shall be conducted by the poll officers provided by law to conduct such elections. The poll officers shall count the votes cast at the election on such question and shall make return thereof to the superintendent of such municipality as required by law. The returns shall be computed by the superintendent and, when so computed, a certificate of the total number of electors voting "Yes" and of the total number of electors voting "No" on such question shall be filed in the office of the municipal governing authority and in the office of the Secretary of State.

(e) Whenever, under this Code section, the question of the adoption of voting machines is about to be submitted to the electors of any municipality, it shall be the duty of the governing authority of such municipality to ascertain whether current funds will be available to pay for such machines, if adopted and purchased, or whether it has power to increase the indebtedness of the municipality in an amount sufficient to pay for the machines without the consent of the electors; and, if such current funds will not be available and the power to increase the indebtedness of the municipality in a sufficient amount without the consent of the electors is lacking, it shall be the duty of the governing authority to submit to the electors of the municipality, in the manner provided by law, at the same election at which the adoption of voting

machines is to be voted on, the question of whether the indebtedness of such municipality shall be increased, in an amount specified by them, sufficient to pay for such voting machines, if adopted.

(f) If a majority of the electors voting on such question or questions shall vote in the affirmative, the governing authority of such municipality shall purchase, lease, or rent voting machines, conforming to the requirements of this part, for recording and computing the vote at all elections held in such municipality.

History.
Code 1933, § 34-1203, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1993, p. 617, § 9; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 39/HB 244.

OPINIONS OF THE ATTORNEY GENERAL

Separate questions on ballot. — The question of whether to authorize the use of voting machines in a county and the question of whether the indebtedness of the county should be increased sufficiently to pay for voting machines should be separately placed on the ballot and may not be combined. 1984 Op. Att'y Gen. No. 84-75.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 198, 245, 307.
C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.
ALR.
Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 A.L.R.2d 1118.

21-2-322. General requirements as to voting machines.

No voting machine shall be adopted or used unless it shall, at the time, satisfy the following requirements:

(1) It shall provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted;

(2) It shall permit each elector, in one operation, to vote for all the candidates of one party or body for presidential electors;

(3) Except as provided in paragraph (2) of this Code section for presidential electors, it shall permit each elector, at other than primaries, to vote a ticket selected from the nominees of any and all parties or bodies, from independent nominations, and from persons not in nomination;

(4) It shall permit each elector to vote, at any election, for any person and for any office for whom and for which he or she is lawfully entitled to vote, whether or not the name of such person or persons appears upon a ballot label as a candidate for election; to vote for as many persons for an office as he or she is entitled to vote for; and to

vote for or against any question upon which he or she is entitled to vote;

(5) It shall preclude each elector from voting for any candidate or upon any question for whom or upon which he or she is not entitled to vote; from voting for more persons for any office than he or she is entitled to vote for; and from voting for any candidate for the same office or upon any question more than once;

(6) It shall be capable of adjustment by poll officers so as to permit each elector at a primary to vote only for the candidates seeking nomination by the party in whose primary he or she is then voting and so as to preclude him or her from voting for the candidates seeking nomination by any party in whose primary he or she is not then voting;

(7) It shall fairly permit each elector to deposit, write in, or affix upon receptacles or devices provided for the purpose ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the machine; provided, however, that, if the machine does not fairly permit such a vote to be cast, an elector desiring to vote for any person whose name does not appear on the machine shall be permitted to vote in the election by the use of a paper ballot which shall be furnished by the superintendent;

(8) It shall permit each elector to change his or her vote for any candidate or upon any question appearing upon the ballot labels up to the time he or she begins to register his or her vote or indicates or expresses his or her intentions to register his or her vote;

(9) It shall permit and require voting in absolute secrecy and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, save an elector whom he or she has assisted or is assisting in voting, as prescribed by law;

(10) It shall have voting devices for separate candidates and questions, which shall be arranged in separate parallel rows or columns, so that, at any primary, one or more adjacent rows or columns may be assigned to the candidates of a party or body and shall have parallel office columns or rows transverse thereto;

(11) It shall have a public counter or other device, the register of which is visible from the outside of the machine, which shall show during any period of voting the total number of electors who have operated the machine during such period of voting;

(12) It shall have a protective counter or other device, the register of which cannot be reset, which shall record the cumulative total number of movements of the operating mechanism;

(13) It shall be provided with a lock or locks, by the use of which,

immediately after the polls are closed or the operation of the machine for a primary or election is completed, all movements of the registering mechanism are absolutely prevented;

(14) It shall be provided with a screen, hood, or curtain which shall conceal the actions of the elector while voting;

(15) It shall be constructed of material of good quality in a neat and workmanlike manner;

(16) It shall, when properly operated, register or record correctly and accurately every vote cast;

(17) It shall be so constructed that an elector may readily learn the method of operating it;

(18) It shall be safely transportable;

(19) It shall be so constructed and controlled that during the progress of voting it shall preclude every person from seeing or knowing the number of votes registered for any candidate and from tampering with any of the registering mechanism; and

(20) If it is of a type equipped with a mechanism for printing paper proof sheets and not requiring the counters to be made visible in order to canvass the votes recorded on the machine, the door or other device concealing such counters or keeping the same concealed may be equipped with a lock or locks, requiring the simultaneous use of three separate and substantially different keys to open or operate the same.

History.

Code 1933, § 34-1206, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 851, §§ 2, 3; Ga. L. 1969, p. 329, § 15a; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 279, § 4; Ga. L. 1998, p. 295, § 1.

Administrative rules and regulations.

Ballot secrecy, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

JUDICIAL DECISIONS

For comparison of procedures followed by political parties and political bodies, see McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

Write-in votes. — The procedures provided for in O.C.G.A. §§ 21-2-132(c) and (d) (see (d) and (e)), 21-2-170(b) and (g), 21-2-171(a), 21-2-172, and 21-2-322(7) relate only to the right to have the name of a candidate or the nominee of a political body printed on the ballot. There is no limitation whatever, procedural or substantive, on the right of a voter to write in on the ballot the name of the candidate of the voter's choice and to have that write-in vote counted. McCrary v. Poythress, 638 F.2d 1308, 1981 U.S. App. LEXIS 19337 (5th Cir.), cert. denied, 454 U.S. 865, 102 S. Ct. 325, 70 L. Ed. 2d 165, 1981 U.S. LEXIS 3671 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Use of stickers, pasters, and stamps is not permitted in casting a write-in vote when voting machines or vote recorders are used. 1965-66 Op. Att'y Gen. No. 66-230.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-323. Installation of voting machines; discontinuance of use of paper ballots; minimum number; different types; requirements as to working order and capacity.

(a) When the use of voting machines has been authorized in the manner prescribed by Code Section 21-2-320 or 21-2-321, such voting machines shall be installed, either simultaneously or gradually, within the municipality. Upon the installation of voting machines in any precinct, the use of paper ballots therein shall be discontinued, except as otherwise provided by this chapter.

(b) In each precinct in which voting machines are used, the municipal governing authority shall provide at least one voting machine for each 500 electors, or major fraction thereof, except that at least one voting machine shall be provided in each such precinct in any case.

(c) Voting machines of different kinds may be used for different precincts in the same municipality.

(d) The municipal governing authority shall provide voting machines in good working order and of sufficient capacity to accommodate the names of a reasonable number of candidates for all party offices and nominations and public offices, which, under existing laws and party rules, are likely to be voted for at any future primary or election.

History.
Code 1933, § 34-1204, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 15; Ga. L. 1976, p. 463, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 40/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-324. Examination and approval of voting machines by Secretary of State; appointment and compensation of examiners; revocation of approval; written verification and certification prior to election or primary; penalties; conflicts of interest.

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any voting machine may request the Secretary of State to examine the machine. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any voting machine previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination; provided, however, that in the case of a request by ten or more electors the examination fee shall be $250.00. The Secretary of State may, at any time, in his or her discretion, reexamine any voting machine.

(b) The Secretary of State shall thereupon require such machine to be examined or reexamined by three examiners whom he or she shall appoint for the purpose, of whom one shall be an expert in patent law and the other two shall be experts in mechanics, and shall require of them a written report on such machine, attested by their signatures; and the Secretary of State shall examine the machine and shall make and file, together with the reports of the appointed examiners, his or her own report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion and in consideration of the reports of the examiners aforesaid, the kind of machine so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If his or her report states that the machine can be so used, the machine shall be deemed approved; and machines of its kind may be adopted for use at primaries and elections as provided in this chapter.

(c) No kind of voting machine not so approved shall be used at any primary or election and if, upon the reexamination of any voting machine previously approved, it shall appear that the machine so reexamined can no longer be safely or accurately used by electors at primaries or elections as provided in this chapter because of any problem concerning its ability to accurately record or tabulate votes, the approval of the same shall immediately be revoked by the Secretary of State; and no such voting machine shall thereafter be purchased for use or be used in this state.

(d) At least ten days prior to any primary or election, including special primaries, special elections, and referendum elections, the

election superintendent shall verify and certify in writing to the Secretary of State that all voting will occur on equipment certified by the Secretary of State.

(e) Any vendor who completes a sale of voting machines that have not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of $100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have authority to impose such penalty upon a finding that such a sale has occurred.

(f) When a machine has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of the machine or of its kind.

(g) Neither the Secretary of State, nor any examiner appointed by him or her for the purpose prescribed by this Code section, nor any superintendent, nor the governing authority of any municipality or a member of such authority, nor any other person involved in the examination process shall have any pecuniary interest in any voting machine or in the manufacture or sale thereof.

(h) The compensation of each examiner appointed under this Code section shall be fixed and paid by the Secretary of State.

History.
Code 1933, § 34-1205, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1984, p. 1087, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 22; Ga. L. 2005, p. 253, § 41/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-325. Form of ballot labels generally.

(a) The ballot labels shall be printed in black ink upon clear, white, or pastel colored material, of such size as will fit the ballot frame, and in plain, clear type so as to be easily readable by persons with normal vision.

(b) If the construction of the machine shall require it, the ballot label for each candidate, group of candidates, political party or body, or question to be voted on shall bear the designating letter or number of the counter on the voting machine which will register or record votes therefor. Each question to be voted on shall appear on the ballot labels in brief form. Unless otherwise provided by law, proposed constitutional amendments so submitted shall be in brief form as directed by the General Assembly and, in the failure to so direct, the form shall be

determined by the Secretary of State. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot and any local questions so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the superintendent. In the case of questions to be voted on by the electors of a municipality, the governing authority shall determine the brief form of the questions.

(c) The ballot label for each candidate or group of candidates nominated by a party or body shall contain the name or designation of the party or body.

(d) The titles of offices may be arranged horizontally or vertically, with the names of candidates for an office arranged transversely under or opposite the title of the office. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot labels.

(e) The names of all candidates nominated by a party or body shall appear in adjacent rows or columns containing generally the names of candidates nominated by such party or body, provided that the names of individual candidates for presidential elector shall not appear upon the ballot labels, but, in lieu thereof, the names of the candidates of such party or body for President and Vice President shall be printed together with the name of such party or body.

(f) The form and arrangement of ballot labels shall be prepared by the superintendent.

(g) The names of all candidates of a party or body shall appear in the same row or column, and no other names shall appear in the same row or column. The names of candidates and independent candidates shall be arranged under or opposite the title of the office for which they are candidates and shall appear in the order prescribed by subsection (c) and the second sentence of subsection (e) of Code Section 21-2-285. The rows or columns occupied by the names of the candidates of political parties and bodies shall be arranged according to the priority prescribed by subsection (c) of Code Section 21-2-285. When voting machines are used on which the titles of offices are arranged horizontally, the names of all candidates for the same office shall appear within the same vertical lines.

(h) In primaries, the ballot labels containing the names of candidates seeking nomination by a political party shall be segregated on the face

of the machine in adjacent rows or columns by parties, the priority of such political parties on the ballot labels to be determined in the order prescribed by subsection (c) of Code Section 21-2-285. If a nonpartisan election is being held in conjunction with a partisan primary, each partisan ballot label shall be clearly marked to indicate that the elector may vote in the nonpartisan election also. In nonpartisan elections, the ballot labels shall include a separate portion for the names of candidates seeking election in a nonpartisan election and the heading and arrangement of such candidates shall be as prescribed by Code Section 21-2-285.1 insofar as practicable. At the top of the separate portion shall be printed in prominent type the words "OFFICIAL NONPARTISAN ELECTION BALLOT."

(i) In primaries, if it shall be impracticable to place on the ballot labels of one machine the names of all candidates seeking nomination in all political parties and the names of all candidates seeking election in a nonpartisan election, the superintendent may arrange for the names of all the candidates seeking nomination in any one political party to be placed on separate voting machines; provided, however, that the names of all candidates seeking election in a nonpartisan election shall appear on all machines.

(j) Within the instruction section of the ballot label there shall be printed the following:

> "I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

(k) Any other provision of law to the contrary notwithstanding, in the event there is no opposed candidate in a precinct in a special or general election, no special or general election shall be held in such precinct unless a write-in candidate has qualified as provided by law or unless there are issues to be submitted to the electorate. Each such unopposed candidate shall be deemed to have voted for himself or herself. Where feasible, the superintendent shall provide notice reasonably calculated to inform the affected electorate that no special or general election is to be conducted. The superintendent shall certify such unopposed candidate as elected in the same manner as he or she certifies other candidates as elected pursuant to Code Section 21-2-493.

History.

Code 1933, § 34-1208, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 851, § 4; Ga. L. 1977, p. 1053, § 6; Ga. L. 1978, p. 1004, § 19; Ga. L. 1978, p. 1979, § 2; Ga. L. 1979, p. 624, § 2; Ga. L. 1980, p. 437, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1983, p. 1190, § 13; Ga. L. 1984, p. 133, § 1; Ga. L. 1986, p. 772, § 4; Ga. L. 1986, p. 1538, § 2; Ga. L. 1987, p. 34, § 1; Ga. L. 1988, p. 647, § 2; Ga. L. 1989, p. 10, § 1; Ga. L. 1994, p. 279, § 5; Ga. L. 1995, p. 1027, § 7; Ga. L. 1996, p. 145, § 16; Ga. L. 1997, p. 8, § 1;

Ga. L. 1997, p. 590, § 29; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 11, 35; Ga. L. 2001, p. 269, § 20; Ga. L. 2011, p. 678, § 6/HB 158; Ga. L. 2012, p. 995, § 23/SB 92.

Editor's notes.

Ga. L. 1983, p. 1190, § 1, not codified by the General Assembly, provided that it was the intent of that Act to implement the provisions of Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Administrative rules and regulations.

Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-225 are included in the annotations for this Code section.

Failure to place a candidate's nickname on the ballot could not be considered an act of misconduct within the meaning of former § 21-3-422(1). Maye v. Pundt, 267 Ga. 243, 477 S.E.2d 119 (decided under former § 21-3-225).

OPINIONS OF THE ATTORNEY GENERAL

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51.

Paper ballots may be used as an alternative to voting machines where ballot questions on a constitutional amendment cannot be made to adhere to the 75-word limitation formerly found within subsection (b) of O.C.G.A. § 21-2-325. 1997 Op. Att'y Gen. No. 97-3.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 307.

C.J.S.

29 C.J.S., Elections, §§ 261, 337, 338.

ALR.

Constitutionality, construction and application of statutes providing that candidates for certain offices shall be placed upon nonpartisan ballot, 125 A.L.R. 1044.

21-2-325.1. Candidates with same or similar names.

If two or more candidates for the same nomination or office shall have the same or similar names, the Secretary of State, in the case of federal or state offices, the superintendent of elections, in the case of county offices, or the official with whom such candidates qualify, in the case of municipal elections, shall print or cause to be printed the residence address of all candidates for such nomination or office on the ballot labels under their names. The designated official shall determine whether the names of the candidates are of such a similar nature as to warrant printing the residence address of all candidates for that office on the ballot labels; and the decision of the designated official shall be conclusive.

History.
Code 1981, § 21-2-325.1, enacted by Ga. L. 2001, p. 230, § 10; Ga. L. 2001, p. 240, § 23; Ga. L. 2003, p. 151, § 1.
Code Commission notes.
The enactment of this Code section by Ga. L. 2001, p. 230, § 10, irreconcilably conflicted with and was treated as superseded by Ga. L. 2001, p. 240, § 23. See County of Butts v. Strahan, 151 Ga. 417 (1921).
Law reviews.
For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 267 et seq.

21-2-326. Unofficial ballot labels.

(a) If ballot labels for a precinct at which a voting machine is to be used are not delivered to the poll officers as required by this chapter, the chief manager of such precinct shall cause other labels to be prepared, printed, or written, as nearly in the form of official ballot labels as practicable; and the poll officers shall cause the labels, so substituted, to be used at the primary or election, in the same manner, as nearly as may be, as the official labels. Such labels, so substituted, shall be known as unofficial ballot labels.

(b) If any voting machine shall become out of order during a primary or election and repair or substitution cannot be made, paper ballots, either printed or written, and of any suitable form, may be used for the taking of votes.

History.
Code 1933, § 34-1215, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1978, p. 1004, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 303 et seq.

C.J.S.
29 C.J.S., Elections, §§ 261, 262, 337, 338.

21-2-327. Preparation of voting machines; custodians and their deputies; inspection; furnishing of supplies.

(a) The superintendent of each municipality shall cause the proper ballot labels to be placed on each voting machine which is to be used in any precinct within such municipality, cause each machine to be placed in proper order for voting, examine each machine before it is sent out to a polling place, see that each registering counter on each machine is set at zero, lock each machine so that the counting machinery cannot be

operated, and seal each machine with a numbered seal. The superintendent or his or her agent shall adjust each machine to be used at a primary, so that the poll officers may lock it on primary day, in such a way that each elector can vote only for the candidates seeking nomination by the political party in whose primary he or she is then voting and so that no elector can vote for the candidates seeking nomination by any political party in whose primary he or she is not then voting.

(b) The superintendent shall appoint one custodian of voting machines and such deputy custodians as may be necessary, whose duty it shall be to prepare the machines to be used at the primaries and elections to be held therein. Each custodian and deputy custodian shall receive from the municipality such compensation as shall be fixed by the governing authority of the municipality. Such custodian shall, under the direction of the superintendent, have charge of and represent the superintendent during the preparation of the voting machines as required by this chapter, and he or she and the deputy custodians, whose duty it shall be to assist him or her in the discharge of his or her duties, shall serve at the pleasure of the superintendent. Each custodian shall take an oath of office framed by the Secretary of State, which shall be filed with the superintendent.

(c) On or before the twelfth day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall mail to the foreperson of the grand jury, the chairperson of the county executive committee of each political party which shall be entitled under existing laws to participate in primaries within the county, and to the chairperson or presiding officer of any organization of citizens within the county having as its purpose or among its purposes the investigation or prosecution of primary and election frauds, which has registered its name and address and the names of its principal officers with the superintendent at least 30 days before such primary or election, and, in the case of an election, to the appropriate committee of each political body which shall be entitled to have the names of its candidates entered on the voting machines, and to each independent candidate who shall be entitled to have his or her name printed on the voting machines, a written notice stating the times when and the place or places where preparation of the machines for use in the several precincts will be started. The grand jury shall appoint a committee, consisting of three of its members, which shall inspect the machines and see that the machines are properly prepared and are placed in proper condition and order for use. In the event the committee of the grand jury fails to be present, the superintendent shall immediately appoint a panel consisting of three electors to perform the duties of the committee of the grand jury set forth in this Code section. Further, one representative of each political party or body, certified by the chairperson of such political party or body, and one representative

of each aforementioned organization of citizens, certified by the chairperson or presiding officer of such organization, and any such independent candidate or his or her certified agent shall be entitled to be present during the preparation of the machines and to see that the machines are properly prepared and are placed in proper condition and order for use. Such committee of the grand jury, representatives, or candidates shall not, however, interfere with the preparation of the machines; and the superintendent may make such reasonable rules and regulations concerning the conduct of such representatives and candidates.

(d) The custodian and deputy custodians of voting machines and the members of the committee of the grand jury, if any, shall make an affidavit, which each shall sign, and request each representative of a party, body, or a citizens' organization, or candidate or his or her agent present at the preparation of the machine to attest, and which shall be filed with the city clerk, stating:

(1) The identifying number or other designation of the voting machine;

(2) That each registering counter on the machine was set at zero;

(3) The number registered on the protective counter or other device of the machine; and

(4) The number on the seal with which the machine is sealed.

(e) No superintendent nor custodian nor other employee of the superintendent shall, in any way, prevent free access to and examination of all voting machines which are to be used at the primary or election by any of the duly appointed representatives or candidates aforesaid; and the superintendent and his or her employees shall afford to each such representative or candidate every facility for the examination of all registering counters, protective counters, and public counters of each and every voting machine.

(f) In every primary or election, the superintendent shall furnish, at the expense of the municipality, all ballot labels, forms of certificates, and other papers and supplies which are required under this chapter and which are not furnished by the Secretary of State, all of which shall be in the form and according to the specifications prescribed from time to time by the Secretary of State. In a municipal primary, ballot labels and other materials necessary for the preparation of the voting machines shall be furnished free of charge to the municipal superintendent by the political party conducting such primary.

History.

Code 1933, § 34-1209, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 16; Ga. L. 1977, p. 1053, § 7; Ga. L. 1978, p. 1004, § 20; Ga. L. 1982, p. 1512, § 5; Ga. L. 1987, p. 34, § 1; Ga. L. 1992, p.

56, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 24; Ga. L. 2005, p. 253, § 42/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-328. Delivery, set up, and sealing of properly furnished voting machines prior to primary or election; protection of voting machines against molestation or injury.

(a) The superintendent shall deliver the proper voting machine or voting machines, properly furnished with ballot labels, to the polling places of the respective precincts at least one hour before the time set for opening the polls at each primary or election and shall cause each machine to be set up in the proper manner for use in voting. Each machine shall then remain sealed until the examination immediately preceding the opening of the polls prescribed by this chapter.

(b) The superintendent shall provide ample protection against molestation of and injury to the voting machine and, for that purpose, shall call upon any law enforcement officer to furnish such assistance as may be necessary; and it shall be the duty of the law enforcement officer to furnish such assistance when so requested by the superintendent.

(c) The superintendent shall furnish for each voting machine at least one hour before the opening of the polls:

(1) A lamp which shall give sufficient light to enable electors, while in the voting machine booth, to read the ballot labels, and which shall be suitable for the use of poll officers in examining the counters; and the lamp shall be prepared and in good order for use before the opening of the polls;

(2) Two diagrams, of suitable size, representing such part of the face of such voting machine as will be in use in the primary or election and accompanied by directions for voting on the machine; and such diagrams shall be posted prominently outside the enclosed space within the polling place; and

(3) A seal for sealing the machine after the polls are closed; an envelope for the return of the keys, if the construction of the voting machine shall permit their separate return; and such other election materials and supplies as may be necessary or as may be required by law.

History.
Code 1933, § 34-1210, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.

Cross references.
Interference with primaries and elections, § 21-2-566.
Tampering with, damaging, improper preparation of, or prevention of proper operation of voting machines or electronic ballot markers or tabulating machines, § 21-2-580.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-329. Delivery of voting machine keys to chief manager.

The superintendent shall deliver the keys which unlock the operating mechanism and the registering counters or counter compartment of the voting machine to the chief manager not later than one hour before the time set for the opening of the polls and shall take his or her receipt therefor. The keys shall be enclosed in a sealed envelope on which shall be written or printed:

(1) The number of the voting machine;

(2) The designation of the precinct;

(3) The number of the seal; and

(4) The number registered on the protective counter or device as reported by the custodian;

provided, however, that, if the type of voting machine used requires the simultaneous use of three keys to unlock the registering counters or counter compartment, only two of the said keys shall be enclosed in such sealed envelope, the third key being retained by the custodian or the superintendent.

History.
Code 1933, § 34-1212, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1987, p. 34, § 1; Ga. L. 1998, p. 295, § 1.

Cross references.
Unauthorized making or possession of voting machine key, § 21-2-581.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-330. Public exhibition of and instruction on sample voting machine.

(a) During the five days preceding a municipal general primary or election or during the three days preceding a municipal special primary or election, the superintendent shall place on public exhibition, in such public places and at such times as he or she may deem most suitable for

the information and instruction of the electors, one or more voting machines containing the ballot labels and showing the offices and questions to be voted upon, the names and arrangements of parties and bodies, and, so far as practicable, the names and arrangements of the candidates to be voted for. Such machine or machines shall be under the charge and care of a person competent as custodian and instructor. No voting machine which is to be assigned for use in a primary or election shall be used for such public exhibition and instruction after having been prepared and sealed for the primary or election.

(b) During such public exhibition and instruction, the counting mechanism of the voting machine shall be concealed from view and the doors or cover concealing the same shall be opened, if at all, only temporarily and only upon written authorization from the superintendent.

(c) Prior to any primary or election, the superintendent may cause copies of any diagram or diagrams required to be furnished with voting machines at polling places to be made, either in full size or in reduced size, and to be posted, published, advertised, or distributed among the electors in such manner as he or she may deem desirable.

History.
Code 1933, § 34-1213, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 43/HB 244.

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Machine need not be on display entire 30 days. — The public display of a voting machine containing the ballot labels is to take place during the 30 days preceding a general or primary election, but there is no requirement that the machine be on display for the entire 30 days. 1972 Op. Att'y Gen. No. U72-108.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-331. Designation and compensation of custodians of voting machines and keys; storage of voting machines when not in use.

(a) The municipal governing authority shall designate a person or persons who shall have the custody of the voting machines of the municipality and the keys therefor when the machines are not in use at a primary or election and shall provide for his or her compensation and for the safe storage and care of the machines and keys.

(b) All voting machines, when not in use, shall be properly covered and stored in a suitable place or places.

History.
Code 1933, § 34-1216, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 44/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-332. Use of portable polling facilities.

In precincts in which voting machines are used, the superintendent may, in his or her discretion, procure and provide portable polling facilities of adequate size for any or all of such precincts.

History.
Code 1933, § 34-1211, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-333. Responsibility of municipal governing authority to provide for payment for voting machines; issuance of bonds or other indebtedness to meet costs.

The governing authority of any municipality which adopts voting machines in a manner provided for by this article shall, upon the purchase of voting machines, provide for their payment by the municipality. Bonds or other evidence of indebtedness may be issued in accordance with the provisions of law relating to the increase of indebtedness of municipalities to meet all or any part of the cost of the voting machines.

History.
Code 1933, § 34-1207, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 45/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 307.

C.J.S.
29 C.J.S., Elections, §§ 261, 337, 338.

21-2-334. Voting by paper ballot when use of voting machine impossible or impracticable.

If a method of nomination or election for any candidate or office, or of voting on any question is prescribed by law, in which the use of voting machines is not possible or practicable, or in case, at any primary or election, the number of candidates seeking nomination or nominated

for any office renders the use of voting machines for such office at such primary or election impracticable, or if, for any other reason, at any primary or election the use of voting machines wholly or in part is not practicable, the superintendent may arrange to have the voting for such candidates or offices or for such questions conducted by paper ballots. In such cases, paper ballots shall be printed for such candidates, offices, or questions, and the primary or election shall be conducted by the poll officers, and the ballots shall be counted and return thereof made in the manner required by law for such nominations, offices, or questions, insofar as paper ballots are used.

History.
Code 1933, § 34-1214, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 307, 316.

C.J.S.
29 C.J.S., Elections, §§ 261, 262, 337, 338.

Part 3

Vote Recorders and Tabulating Machines

21-2-350 through 21-2-364. [Reserved]

History.
Ga. L. 2002, p. 598, § 2-10 provided for the repeal of this part effective April 1, 2003. This part consisted of Code Sections 21-2-350 through 21-2-364, relating to voting machines and vote recorders, and was based on Code 1933, §§ 34-1217—34-1230, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 226, § 2; Ga. L. 1968, p. 851, §§ 5, 6; Ga. L. 1968, p. 861, § 1; Ga. L. 1968, p. 871, §§ 9, 9a, 16a; Ga. L. 1969, p. 329, §§ 16, 17; Ga. L. 1970, p. 347, §§ 17, 18; Ga. L. 1978, p. 1004, § 22; Ga. L. 1979, p. 955, § 5; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1292, § 9; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 675, § 1; Ga. L. 1984, p. 1087, §§ 3-7; Ga. L. 1985, p. 206, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 279, § 6; Ga. L. 1997, p. 590, § 30; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 12, 36; Ga. L. 2001, p. 230, § 11; Code 1981, § 21-2-354.1, enacted by Ga. L. 2001, p. 240, § 26; Ga. L. 2001, p. 240, §§ 25, 27; repealed by Ga. L. 2002, p. 598, § 2-10, effective April 1, 2003.

Editor's notes.
Ga. L. 2002, p. 598, § 2-10 repealed and reserved this article, effective April 1, 2003.

Part 4

Optical Scanning Voting Systems

Cross references.
Precincts using optical scanning voting equipment, § 21-2-480 et seq.

Editor's notes.
Ga. L. 1998, p. 295, § 1, effective January 1, 1999, repealed Code Section 21-2-

365, based on Code 1981, § 21-2-365, enacted by Ga. L. 1988, p. 964, § 2. Section 14 of Ga. L. 1998, p. 1231, enacted a Part 4 which was reenacted by § 37 of Ga. L. 1998, p. 1231, effective January 1, 1999.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 34-1220 are included in the annotations for this Code section.

It is the duty of the voter to make the voter's intention clear and certain, upon pain of having the vote cast out if that does not appear. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967) (decided under former Code 1933, § 34-1220).

21-2-365. Requirements for use of optical scanning voting systems.

No optical scanning voting system shall be adopted or used unless it shall, at the time, satisfy the following requirements:

(1) It shall provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted;

(2) It shall permit each elector, in one operation per ballot, to vote for all the candidates of one party or body for presidential electors;

(3) Except as provided in paragraph (2) of this Code section for presidential electors, it shall permit each elector, at other than primaries, to vote a ticket selected from the nominees of any and all parties or bodies, from independent nominations, and from persons not in nomination;

(4) It shall permit each elector to vote, at any election, for any person and for any office for whom and for which he or she is lawfully entitled to vote, whether or not the name of such person or persons appears upon a ballot as a candidate for election; to vote for as many persons for an office as he or she is entitled to vote for; and to vote for or against any question upon which he or she is entitled to vote;

(5) A ballot scanner shall preclude the counting of votes for any candidate or upon any question for whom or upon which an elector is not entitled to vote; shall preclude the counting of votes for more persons for any office than he or she is entitled to vote for; and shall preclude the counting of votes for any candidate for the same office or upon any question more than once;

(6) It shall permit voting in absolute secrecy so that no person can see or know for whom any other elector has voted or is voting, save an elector whom he or she has assisted or is assisting in voting, as prescribed by law;

(7) It shall be constructed of material of good quality in a neat and workmanlike manner;

(8) It shall, when properly operated, record correctly and accurately every vote cast;

(9) It shall be so constructed that an elector may readily learn the method of operating it; and

(10) It shall be safely transportable.

History.
Code 1981, § 21-2-365, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2019, p. 7, § 19/HB 316.

Editor's notes.
Ga L. 1998, p. 1231, § 13, effective April 20, 1998, and Ga. L. 1998, p. 265, § 1, repealed former Code Section 21-2-365, which was based on Code 1981, § 21-2-365, enacted by Ga. L. 1988, p. 964, § 2, relating to the use of optical scan voting systems.

Administrative rules and regulations.
Ballot secrecy, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

21-2-366. Authorization for utilization of optical scanning systems.

The governing authority of any county or municipality may, at any regular meeting or at a special meeting called for the purpose, by a majority vote authorize and direct the use of optical scanning voting systems for recording and computing the vote at elections held in the county or municipality. If so authorized and directed, the governing authority shall purchase, lease, rent, or otherwise procure optical scanning voting systems conforming to the requirements of this part.

History.
Code 1981, § 21-2-366, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1.

21-2-367. Installation of systems; number of systems; good working order.

(a) When the use of optical scanning voting systems has been authorized in the manner prescribed in this part, such optical scanning voting systems shall be installed, either simultaneously or gradually, within the county or municipality.

(b)(1) In each precinct in which optical scanning voting systems are used in a state-wide general election, the county election superintendent shall provide at least one voting booth or enclosure for each 250 electors therein, or fraction thereof.

(2) For any other primary, election, or runoff, the county or municipal election superintendent may provide a greater or lesser number of voting booths or enclosures if, after a thorough consider-

ation of the type of election, expected turnout, the number of electors who have already voted by advance voting or absentee ballot, and other relevant factors that inform the appropriate amount of equipment needed, such superintendent determines that a different amount of equipment is needed or sufficient. Such determination shall be subject to the provisions of Code Section 21-2-263.

(c) Reserved.

(d) The county or municipal governing authority, as appropriate, shall provide optical scanning voting systems in good working order and of sufficient capacity to accommodate the names of a reasonable number of candidates for all party offices and nominations and public offices which, under the provisions of existing laws and party rules, are likely to be voted for at any future primary or election.

History.

Code 1981, § 21-2-367, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2005, p. 253, § 46/HB 244; Ga. L. 2019, p. 7, § 20/HB 316; Ga. L. 2021, p. 14, § 22/SB 202.

The 2021 amendment, effective March 25, 2021, designated the existing provisions of subsection (b) as paragraph (b)(1), substituted "used in a state-wide general election, the county election superintendent shall" for "used, the county or municipal governing authority, as appropriate, shall" near the beginning of paragraph (b)(1), and added paragraph (b)(2).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties

received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is

severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-368. Review of manufacturer's systems by Secretary of State; appointment and compensation of examiners; revocation of approval; written verification and certification prior to election or primary; penalties; conflicts of interest.

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any optical scanning voting system may request the Secretary of State to examine the optical scanning voting system. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any optical scanning voting system previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination. The Secretary of State may, at any time, in his or her discretion, reexamine any optical scanning voting system.

(b) The Secretary of State shall thereupon examine or reexamine such optical scanning voting system and shall make and file in his or her office a report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion, the kind of optical scanning voting system so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If this report states that the optical scanning voting system can be so used, the optical scanning voting system shall be deemed approved; and optical scanning voting systems of its kind may be adopted for use at primaries and elections as provided in this chapter.

(c) No kind of optical scanning voting system not so approved shall be used at any primary or election and if, upon the reexamination of any optical scanning voting system previously approved, it shall appear that the optical scanning voting system so reexamined can no longer be safely or accurately used by electors at primaries or elections as provided in this chapter because of any problem concerning its ability to accurately record or tabulate votes, the approval of the same shall immediately be revoked by the Secretary of State; and no such optical scanning voting system shall thereafter be purchased for use or be used in this state.

(d) At least ten days prior to any primary or election, including special primaries, special elections, and referendum elections, the election superintendent shall verify and certify in writing to the Secretary of State that all voting will occur on equipment certified by the Secretary of State.

(e) Any vendor who completes a sale of optical scanning voting system that has not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of $100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have authority to impose such penalty upon a finding that such a sale has occurred.

(f) When an optical scanning voting system has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of the optical scanning voting system, or of its kind.

(g) Neither the Secretary of State, nor any custodian, nor the governing authority of any county or municipality or a member of such authority nor any other person involved in the examination process shall have any pecuniary interest in any optical scanning voting system or in the manufacture or sale thereof.

History. Code 1981, § 21-2-368, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2001, p. 240, § 28.

21-2-369. Printing of ballots; arrangement.

(a) The ballots shall be printed in black ink upon clear, white, or colored material, of such size and arrangement as will suit the construction of the ballot scanner, and in plain, clear type so as to be easily readable by persons with normal vision; provided, however, that red material shall not be used except that all ovals appearing on the ballot to indicate where a voter should mark to cast a vote may be printed in red ink.

(b) The arrangement of offices, names of candidates, and questions upon the ballots shall conform as nearly as practicable to this chapter for the arrangement of same on paper ballots; provided, however, that such form may be varied in order to present a clear presentation of candidates and questions to the electors and that the ballots shall not be required to have a name stub.

(c) The form and arrangement of ballots shall be prescribed by the Secretary of State and prepared by the superintendent.

History.
Code 1981, § 21-2-369, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2003, p. 517, § 30; Ga. L. 2005, p. 253, § 47/HB 244; Ga. L. 2019, p. 7, § 21/HB 316.

21-2-369.1. Candidates with similar names.

If two or more candidates for the same nomination or office shall have the same or similar names, the Secretary of State, in the case of federal or state offices, the superintendent of elections, in the case of county offices, or the official with whom such candidates qualify, in the case of municipal elections, shall print or cause to be printed the residence of all candidates for such nomination or office on the ballot under their names. The designated official shall determine whether the names of the candidates are of such a similar nature as to warrant printing the residence of all candidates for that office on the ballot; and the decision of the designated official shall be conclusive.

History.
Code 1981, § 21-2-369.1, enacted by Ga. L. 2001, p. 240, § 29.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code Section 21-2-354 are included in the annotations for this Code section.

Name of candidate. — Titles such as "Dr.", "Rev.", "Judge", "Mr.", "Ms.", "Mrs.", or "Miss" are not a part of a person's name and should not be placed on the ballot as a part of the candidate's name. 1984 Op. Att'y Gen. No. 84-51 (decided under former O.C.G.A. § 21-2-354).

21-2-370. [Reserved] Separate optical scanners for primary elections.

History.
Ga. L. 1998, p. 1231, § 37; repealed by Ga. L. 1999, p. 29, § 1, effective July 1, 1999.

Editor's notes.
Ga. L. 1999, p. 29, § 1 repealed and reserved this Code section, effective July 1, 1999.

21-2-371. Unofficial ballots; out-of-order systems.

(a) If ballots for a precinct at which an optical scanning voting system is to be used shall not be delivered to the poll officers as required by this chapter, the chief manager of such precinct shall cause other ballots to be prepared, printed, or written, as nearly in the form of official ballots as practicable; and the poll officers shall cause the ballots, so substituted, to be used at the primary or election, in the same manner, as nearly as may be, as the official ballots. Such ballots, so substituted, shall be known as unofficial ballots.

(b) If any optical scanning voting system being used in any primary or election shall become out of order during such primary or election, it

shall, if possible, be repaired or another optical scanning voting system substituted by the custodian or superintendent as promptly as possible, for which purpose the governing authority of the county or municipality may purchase as many extra optical scanning voting systems as it may deem necessary; but, in case such repair or substitution cannot be made, the ballots may be voted manually.

History.
Code 1981, § 21-2-371, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1.

21-2-372. Ballot description.

Ballots shall be of suitable design, size, and stock to permit processing by a ballot scanner and shall be printed in black ink on clear, white, or colored material. Other than ballots delivered electronically to qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., the ballots shall be printed on security paper that incorporates features which can be used to authenticate the ballot as an official ballot but which do not make the ballot identifiable to a particular elector.

History.
Code 1981, § 21-2-372, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2019, p. 7, § 22/HB 316; Ga. L. 2021, p. 14, § 23/SB 202.

The 2021 amendment, effective July 1, 2021, added the last sentence in this Code section.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have

access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further week-

end voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-373. Write-in votes; secrecy.

In elections, electors shall be permitted to cast write-in votes. The design of the ballot shall permit the superintendents, in counting the write-in votes, to determine readily whether an elector has cast any write-in vote not authorized by law. The Secretary of State, in specifying the form of the ballot, and the State Election Board, in promulgating rules and regulations respecting the conduct of elections, shall provide for ballot secrecy in connection with write-in votes.

History.

Code 1981, § 21-2-373, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1.

Cross references.

Exceptions to right to register and vote, Ga. Const. 1983, Art. II, Sec. I, Para. III.

Procedure as to count and return of votes, § 21-2-437.

Administrative rules and regulations.

Ballot secrecy, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

Law reviews.

For note, "Georgia's Runoff Election System Has Run Its Course," see 54 Ga. L. Rev. 1063 (2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-1224 are included in the annotations for this Code section.

Unshackled right of voters to cast write-in votes has long been recognized as a matter of Georgia law. 1980 Op. Att'y Gen. No. 80-120 (decided under former Code 1933, § 34-1224).

Write-in vote by vote recorder consisting of candidate's last name and office candidate seeks is valid. 1980 Op. Att'y Gen. No. 80-120 (decided under former Code 1933, § 34-1224).

Use of stickers, pasters, and stamps is not permitted in casting a write-in vote when voting machines or vote recorders are used. 1965-66 Op. Att'y Gen. No. 66-230 (decided under former Code 1933, § 34-1224).

21-2-374. Proper programming; proper order; testing; supplies.

(a) The superintendent of each county or municipality shall order the proper programming to be placed in each ballot scanner used in any precinct or central tabulating location.

(b) On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elec-

tions, the superintendent shall have the ballot scanners tested to ascertain that they will correctly count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be made at least five days prior thereto; provided, however, that, in the case of a runoff, the public notice shall be made at least three days prior thereto. Representatives of political parties and bodies, candidates, news media, and the public shall be permitted to observe such tests. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each question and shall include for each office one or more ballots which are improperly marked and one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the ballot scanner to reject such votes. The ballot scanner shall not be approved unless it produces an errorless count. If any error is detected, the cause therefor shall be ascertained and corrected; and an errorless count shall be made before the ballot scanner is approved. The superintendent shall cause the pretested ballot scanners to be placed at the various polling places to be used in the primary or election. The superintendent shall require that each ballot scanner be thoroughly tested and inspected prior to each primary and election in which it is used and shall keep such tested material as certification of an errorless count on each ballot scanner. In counties using central count ballot scanners, the same test shall be repeated immediately before the start of the official count of the ballots and at the conclusion of such count. Precinct ballot scanners shall produce a zero tape prior to any ballots being inserted on the day of any primary or election.

(c) In every primary or election, the superintendent shall furnish, at the expense of the county or municipality, all ballots, forms of certificates, and other papers and supplies required under this chapter and which are not furnished by the Secretary of State, all of which shall be in the form and according to the specifications prescribed, from time to time, by the Secretary of State.

History.
Code 1981, § 21-2-374, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2000, p. 135, § 1; Ga. L. 2001, p. 240, § 30; Ga. L. 2005, p. 253, § 48/HB 244; Ga. L. 2007, p. 64, § 1/SB 124; Ga. L. 2019, p. 7, § 23/HB 316.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

21-2-375. Delivery of equipment to polling places; protection for equipment; required accessories.

(a) In counties using precinct count ballot scanners, the superintendent shall deliver the proper ballot scanner to the polling places at least one hour before the time set for opening of the polls at each primary or

election and shall cause each to be set up in the proper manner for use in voting.

(b) The superintendent shall provide ample protection against molestation of and injury to the ballot scanner and, for that purpose, shall call upon any law enforcement officer to furnish such assistance as may be necessary; and it shall be the duty of the law enforcement officer to furnish such assistance when so requested by the superintendent.

(c) The superintendent shall at least one hour before the opening of the polls:

(1) Provide sufficient lighting to enable electors, while in the voting booth, to read the ballot, which lighting shall be suitable for the use of poll officers in examining the booth; and such lighting shall be in good working order before the opening of the polls;

(2) Prominently post directions for voting within the voting booth and post within the enclosed space signs reminding electors to verify their ballot choices prior to inserting the scanning ballot into the ballot scanner and stating that sample ballots are available for review upon request; at least two sample ballots in use for the primary or election shall be posted prominently outside the enclosed space within the polling place and additional sample ballots shall be available upon request;

(3) Ensure that the precinct count ballot scanner shall have a seal securing the memory pack in use throughout the election day; such seal shall not be broken unless the ballot scanner is replaced due to malfunction; and

(4) Provide such other materials and supplies as may be necessary or as may be required by law.

History.
Code 1981, § 21-2-375, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2019, p. 7, § 24/HB 316.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

21-2-376. Demonstration of equipment.

During the 30 days next preceding a general primary or election or during the ten days next preceding a special primary or election, the superintendent shall place on public exhibition, in such public places and at such times as he or she may deem most suitable for the information and instruction of the electors, one or more sets of sample ballots that will be used in such election. The sample ballots shall show the offices and questions to be voted upon, the names and arrangements of parties and bodies, and the names and arrangements of the candidates to be voted for. Such ballots shall be under the charge and care of a person competent as an instructor.

History. Code 1981, § 21-2-376, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1.

21-2-377. Custody and storage when not in use.

(a) The superintendent shall designate a person or persons who shall have custody of the ballot scanners of the county or municipality when they are not in use at a primary or election and shall provide for his or her compensation and for the safe storage and care of the ballot scanners.

(b) All ballot scanners, when not in use, shall be properly covered and stored in a suitable place or places.

History. Code 1981, § 21-2-377, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1; Ga. L. 2019, p. 7, § 25/HB 316.

21-2-378. Payment for systems.

The governing authority of any county or municipality which adopts optical scanning voting systems in the manner provided for by this part shall, upon the purchase of optical scanning voting systems, provide for their payment by the county or municipality. Bonds or other evidence of indebtedness may be issued in accordance with the provisions of law relating to the increase of indebtedness of counties or municipalities to meet all or any part of the cost of the optical scanning voting systems.

History. Code 1981, § 21-2-378, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1.

21-2-379. Arrangements for appropriate ballots when use of optical scanning voting systems impracticable.

If a method of nomination or election for any candidate or office, or of voting on any question is prescribed by law, in which the use of optical scanning voting systems is not possible or practicable, or in case, at any primary or election, the number of candidates seeking nomination or nominated for any office renders the use of optical scanning voting systems for such office at such primary or election impracticable, or if, for any other reason, at any primary or election the use of optical scanning voting systems wholly or in part is not practicable, the superintendent may arrange to have the voting for such candidates or offices or for such questions conducted by any other lawful method authorized in this chapter. In such cases, appropriate ballots shall be printed for such candidates, offices, or questions, and the primary or election shall be conducted by the poll officers, and the ballots shall be counted and return thereof made in the manner required by law for such method.

History.
Code 1981, § 21-2-379, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 1999, p. 29, § 1.

Part 5

Electronic Recording Voting Systems

Editor's notes.
Ga. L. 1998, p. 1231, § 14, effective April 20, 1998, enacted this part. This part was then reenacted by Ga. L. 1998, p. 1231, § 37, effective January 1, 1999.

21-2-379.1. Requirements for use of direct recording electronic voting systems.

No direct recording electronic voting system shall be adopted or used unless it shall, at the time, satisfy the following requirements:

(1) It shall provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted;

(2) It shall permit each elector, in one operation, to vote for all the candidates of one party or body for presidential electors;

(3) Except as provided in paragraph (2) of this Code section for presidential electors, it shall permit each elector, at other than primaries, to vote a ticket selected from the nominees of any and all parties or bodies, from independent nominations, and from persons not in nomination;

(4) It shall permit each elector to vote, at any election, for any person and for any office for whom and for which he or she is lawfully entitled to vote, whether or not the name of such person or persons appears as a candidate for election; to vote for as many persons for an office as he or she is entitled to vote for; and to vote for or against any question upon which he or she is entitled to vote;

(5) It shall preclude the counting of votes for any candidate or upon any question for whom or upon which an elector is not entitled to vote; shall preclude the counting of votes for more persons for any office than he or she is entitled to vote for; and shall preclude the counting of votes for any candidate for the same office or upon any question more than once;

(6) It shall permit voting in absolute secrecy so that no person can see or know for whom any other elector has voted or is voting, save an elector whom he or she has assisted or is assisting in voting, as prescribed by law;

(7) It shall be constructed of material of good quality in a neat and workmanlike manner;

(8) It shall, when properly operated, record correctly and accurately every vote cast;

(9) It shall be so constructed that an elector may readily learn the method of operating it; and

(10) It shall be safely transportable.

History.
Code 1981, § 21-2-379.1, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 2008, p. 261, § 1/SB 456.

Administrative rules and regulations.
Ballot secrecy, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.01.

JUDICIAL DECISIONS

Direct recording electronic equipment. — Trial court did not err in granting the Secretary of State, the Governor, and the Georgia State Election Board summary judgment in voters' action challenging the use of direct recording electronic (DRE) equipment because touchscreen machines accurately recorded each vote when the machines were properly operated, and uncontroverted evidence showed that the Secretary of State had properly certified the DRE voting system pursuant to O.C.G.A. § 21-2-379.2. Favorito v. Handel, 285 Ga. 795, 684 S.E.2d 257, 2009 Ga. LEXIS 486 (2009).

RESEARCH REFERENCES

ALR.
Electronic voting systems, 12 A.L.R.6th 523.

21-2-379.2. Review of manufacturer's recording electronic voting system by Secretary of State; appointment and compensation of examiners; revocation of approval; penalties; conflicts of interest.

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any direct recording electronic voting system may request the Secretary of State to examine the system. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any such system previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination. The Secretary of State may, at any time, in his or her discretion, reexamine any such system.

(b) The Secretary of State shall thereupon examine or reexamine such direct recording electronic voting system and shall make and file in his or her office a report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion, the kind of system so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If this report states

that the system can be so used, the system shall be deemed approved; and systems of its kind may be adopted for use at primaries and elections as provided in this chapter.

(c) No kind of direct recording electronic voting system not so approved shall be used at any primary or election and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be safely or accurately used by electors at primaries or elections as provided in this chapter because of any problem concerning its ability to accurately record or tabulate votes, the approval of the same shall immediately be revoked by the Secretary of State; and no such system shall thereafter be purchased for use or be used in this state.

(d) Reserved.

(e) Any vendor who completes a sale of a direct recording electronic voting system that has not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of $100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have authority to impose such penalty upon a finding that such a sale has occurred.

(f) When a direct recording electronic voting system has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of such system, or of its kind.

(g) Neither the Secretary of State, nor any custodian, nor the governing authority of any county or municipality or a member of such authority nor any other person involved in the examination process shall have any pecuniary interest in any direct recording electronic voting system or in the manufacture or sale thereof.

History.
Code 1981, § 21-2-379.2, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 2001, p. 240, § 31; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2011, p. 683, § 9/SB 82.

JUDICIAL DECISIONS

Direct recording electronic equipment. — Trial court did not err in granting the Secretary of State, the Governor, and the Georgia State Election Board summary judgment in voters' action challenging the use of direct recording electronic (DRE) equipment because touchscreen machines accurately recorded each vote when the machines were properly operated, and uncontroverted evidence showed that the Secretary of State had properly certified the DRE voting system pursuant to O.C.G.A. § 21-2-379.2. Favorito v. Handel, 285 Ga. 795, 684 S.E.2d 257, 2009 Ga. LEXIS 486 (2009).

21-2-379.3. State furnishing direct recording voting systems; purchase by municipalities or counties.

(a) The state shall furnish a uniform system of direct recording electronic (DRE) equipment for use in each county by 2004. The governing authority of a municipality may elect to acquire its own DRE equipment by purchase, lease, rental, or other procurement process at its own expense. The governing authority of a county may purchase, lease, or otherwise acquire more of the type of DRE equipment furnished by the state, if the governing authority so desires, at its own expense.

(b) The governing authority of a municipality or a county desiring to acquire such equipment may at any regular meeting or at a special meeting called for the purpose, by a majority vote, authorize and direct the acquisition of such equipment. Bonds or other evidence of indebtedness may be issued in accordance with the provisions of law relating to the increase of indebtedness of counties and municipalities to meet all or any part of the cost of such DRE voting systems.

History.
Code 1981, § 21-2-379.3, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 2002, p. 598, § 1-2.

Administrative rules and regulations.
Conduct of elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Primaries and Elections, § 183-1-12-.01.

21-2-379.4. Ballot appearance; write in votes on DRE systems.

(a) The ballots for direct recording electronic (DRE) voting systems shall be of such size and arrangement as will suit the construction of the DRE screen and shall be in plain, clear type that is easily readable by persons with normal vision. If the equipment has the capacity for color display, the names of all candidates in a particular race shall be displayed in the same color, font, and size and the political party or body affiliation of candidates may be displayed in a color different from that used to display the names of the candidates, but all political party or body affiliations shall be displayed in the same color. All candidates' names and political parties shall be printed in the same size and font. All ballot questions and constitutional amendments shall be displayed in the same color.

(b) The arrangement of offices, names of candidates, and questions upon the ballots shall conform as nearly as practicable to this chapter for the arrangement of such offices, names of candidates, and questions on paper ballots.

(c) Electors shall be permitted to cast write-in votes on DRE voting systems as provided in Code Section 21-2-133. The design of the ballot

shall permit the election superintendent and poll workers when obtaining the vote count from such systems to determine readily whether an elector has cast any write-in vote not authorized by law.

(d) The form and arrangement of ballots shall be prescribed by the Secretary of State and prepared by the election superintendent.

History. Code 1981, § 21-2-379.4, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 2002, p. 598, § 1-3; Ga. L. 2003, p. 151, § 1.

21-2-379.5. Ballot information.

(a) If two or more candidates for the same nomination or office shall have the same or similar names, the Secretary of State, in the case of federal or state offices, the superintendent of elections, in the case of county offices, or the official with whom such candidates qualify, in the case of municipal elections, shall print or cause to be printed the residence of all candidates for such nomination or office on the ballot under their names. The designated official shall determine whether the names of the candidates are of such a similar nature as to warrant printing the residence of all candidates for that office on the ballot; and the decision of the designated official shall be conclusive.

(b) The ballot for each candidate or group of candidates nominated by a political party or body shall display the name or designation of the political party or body.

(c) The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot.

(d) Unless a candidate has filed with his or her nominating petition a certificate from a political party or body attesting that such candidate is the nominee of such party or body by virtue of having been nominated in a duly constituted party or body convention, the candidate's name shall appear on the ballot as an independent.

(e) When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President. The individual names or the nominees of each political party or body for such offices shall be posted at each polling place with the sample ballots required by subsection (d) of Code Section 21-2-379.7 arranged alphabetically under the names of the candidates of the party or body for President and Vice President of the United States. A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.

(f) When proposed constitutional amendments or other questions are

submitted to a vote of the electors, each amendment or other question so submitted may be printed upon the ballot below the groups of candidates for the various offices. Proposed constitutional amendments so submitted shall be printed in the order determined by the Constitutional Amendments Publication Board and in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include the short title or heading provided for in subsection (c) of Code Section 50-12-101. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot; and any local questions so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the superintendent. Next to or below the question there shall be placed the words "YES" and "NO" between which the elector may choose in casting his or her vote.

(g) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require.

History.
Code 1981, § 21-2-379.5, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 517, § 31; Ga. L. 2012, p. 995, § 24/SB 92.
Administrative rules and regulations.
Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, § 183-1-11-.02.

21-2-379.6. Maintenance of voting systems and supplies.

(a) The superintendent of each county or municipality shall cause the proper ballot design and style to be programmed for each direct recording electronic (DRE) unit which is to be used in any precinct within such county or municipality, cause each such unit to be placed in proper order for voting, examine each unit before it is sent to a polling place, verify that each registering mechanism is set at zero, and properly secure each unit so that the counting machinery cannot be operated until later authorized.

(b) The superintendent may appoint, with the approval of the county or municipal governing authority, as appropriate, a custodian of the DRE units, and deputy custodians as may be necessary, whose duty shall be to prepare the units to be used in the county or municipality at the primaries and elections to be held therein. Each custodian and deputy custodian shall receive from the county or municipality such compensation as shall be fixed by the governing authority of the county or municipality. Such custodian shall, under the direction of the

superintendent, have charge of and represent the superintendent during the preparation of the units as required by this chapter. The custodian and deputy custodians shall serve at the pleasure of the superintendent. Each custodian shall take an oath of office prepared by the Secretary of State before each primary or election which shall be filed with the superintendent.

(c) On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall have each DRE unit tested to ascertain that it will correctly count the votes cast for all offices and on all questions in a manner that the State Election Board shall prescribe by rule or regulation. On or before the third day preceding a primary runoff or election runoff, including special primary runoffs and special election runoffs, the superintendent shall test a number of DRE units at random to ascertain that the units will correctly count the votes cast for all offices. If the total number of DRE units in the county or municipality is 30 units or less, all of the units shall be tested. If the total number of DRE units in the county or municipality is more than 30 but not more than 100, then at least one-half of the units shall be tested at random. If there are more than 100 DRE units in the county or municipality, the superintendent shall test at least 15 percent of the units at random. In no event shall the superintendent test less than one DRE unit per precinct. All memory cards to be used in the runoff shall be tested. Public notice of the time and place of the test shall be made at least five days prior thereto; provided, however, that, in the case of a runoff, the public notice shall be made at least three days prior thereto. Representatives of political parties and bodies, news media, and the public shall be permitted to observe such tests.

(d) In every primary or election, the superintendent shall furnish, at the expense of the county or municipality, all ballots, forms of certificates, and other papers and supplies required under this chapter which are not furnished by the Secretary of State, all of which shall be in the form and according to any specifications prescribed, from time to time, by the Secretary of State.

History.
Code 1981, § 21-2-379.6, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 517, § 32; Ga. L. 2005, p. 253, § 49/HB 244.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-2-359 are included in the annotations for this Code section.

Intent of testing and public examination. — In former O.C.G.A. § 21-2-359 and other sections, the General Assembly expressed an intent that the public inform itself of the accuracy of the voting process. It would be inconsistent with that intent to permit someone to force a recount under O.C.G.A. § 21-2-524(c) based on the mere speculative belief that an error in

counting occurred. Ellis v. Johnson, 263 Ga. 514, 435 S.E.2d 923, 1993 Ga. LEXIS 787 (1993) (decided under former O.C.G.A. § 21-2-359).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 327, 394, 527 et seq.

21-2-379.7. Preparation of polling places.

(a) The superintendent or the custodians shall deliver the proper direct recording electronic (DRE) units to the polling places of the respective precincts at least one hour before the time for opening the polls at each primary or election and shall cause each unit to be set up in the proper manner for use in voting.

(b) The superintendent shall require that each DRE unit be thoroughly tested, inspected, and sealed prior to the delivery of each DRE unit to the polling place. Prior to opening the polls each day on which the units will be used in a primary or election, the manager shall break the seal on each unit, turn on each unit, certify that each unit is operating properly and is set to zero, and print a zero tape certifying that each unit is set to zero and shall keep or record such certification on each unit.

(c) The superintendent and poll managers shall provide ample protection against molestation of and injury to the DRE units, and, for that purpose, the superintendent and poll manager may call upon any law enforcement officer to furnish such assistance as may be necessary. It shall be the duty of any such law enforcement officer to furnish such assistance when so requested by the superintendent or poll manager.

(d) The superintendent shall, at least one hour prior to the opening of the polls:

(1) Provide sufficient lighting to enable electors, if needed in the voting booth, to read the ballot and which shall be suitable for the use of the poll officers in examining the booth and conducting their responsibilities;

(2) Provide directions for voting on the DRE units which shall be prominently posted within each voting booth and at least two sample ballots for the primary or election which shall be prominently posted outside the enclosed space within the polling place;

(3) Ensure that each DRE unit's tabulating mechanism is secure throughout the day during the primary or election;

(4) Provide at least one DRE unit accessible to disabled electors at each precinct; and

(5) Provide such other materials and supplies as may be necessary or required by law.

History. Code 1981, § 21-2-379.7, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 151, § 1; Ga. L. 2003, p. 517, § 33.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 147, 325, 331.

21-2-379.8. Public exhibition of voting system and sample ballot.

(a) The superintendent or his or her designee shall, upon request, make available for demonstration direct recording electronic (DRE) units. The Secretary of State shall advise the superintendents on recommended methods of demonstrating such units so as to properly educate electors in the use thereof, and, at least during the initial year in which DRE equipment is used in a county or municipality, all superintendents shall offer a series of demonstrations and organized voter education initiatives to equip electors for using such equipment in voting.

(b) At least 45 days before a general primary or election or during the ten days before a special primary or election and at least 21 days before a municipal general primary or election or during the ten days before a municipal special primary or election, the superintendent shall place on public exhibition, in such public places and at such times as the superintendent shall deem most suitable for the information and instruction of the electors, a sample ballot to be used in such election. The sample ballot shall show the offices and questions to be voted upon, the names and arrangements of the political parties and bodies, and the names and arrangements of the candidates to be voted for. Such sample ballots shall be under the charge and care of a person who is, in the opinion of the superintendent, competent and qualified as an instructor concerning such ballots and voting procedures.

History. Code 1981, § 21-2-379.8, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2010, p. 914, § 16/HB 540.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 213 et seq.

21-2-379.9. Storage of voting equipment.

(a) All direct recording electronic (DRE) units and related equip-

ment, when not in use, shall be properly stored and secured under conditions as shall be specified by the Secretary of State.

(b) The superintendent shall store the units and related equipment under his or her supervision or shall designate a person or entity who shall provide secure storage of such units and related equipment when it is not in use at a primary or election. The superintendent shall provide compensation for the safe storage and care of such units and related equipment if the units and related equipment are stored by a person or entity other than the superintendent.

History.
Code 1981, § 21-2-379.9, enacted by Ga. L. 2002, p. 598, § 1-4.

21-2-379.10. Procedure for electors.

(a) A duly qualified elector shall cast his or her vote on a direct recording electronic (DRE) unit by touching the screen or pressing the appropriate button on the unit for the candidate or issue of such elector's choice. After having the opportunity to vote in all races and upon all questions in which the elector is eligible to vote, the unit shall display a summary of the choices which the elector has made. At that time, the elector shall also be notified of any races or questions in which the elector did not make a selection and all other choices of the elector shall be displayed for the elector's review. The elector shall have the opportunity to change any choices which the elector made in voting the ballot and be allowed to vote in those races and on those questions which the elector did not previously make a selection or cast a vote, and the elector will again be presented with a summary display of his or her choices.

(b) After the summary screen is displayed and the elector desires to make no further changes to his or her votes, the elector shall be notified that he or she is about to cast the ballot. The elector shall then press the appropriate button on the unit or location on the screen to actually cast his or her ballot. After pressing the appropriate button on the unit or location on the screen to cast the ballot, the elector's vote shall be final and shall not be subsequently altered.

(c) If an elector leaves the voting booth without having pressed the appropriate button on the unit or location on the screen to finally cast his or her ballot and cannot be located to return to the booth to complete the voting process, then a poll worker shall take the steps necessary to void the ballot that was not completed by the elector and an appropriate record shall be made of such event.

History. Code 1981, § 21-2-379.10, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 151, § 1.

21-2-379.11. Procedure for tabulation of votes.

(a) In primaries and elections in which direct recording electronic (DRE) voting equipment is used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent. All persons who perform any duties at the tabulating center shall be deputized by the superintendent and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be in the immediate area designated for officers deputized to conduct the count.

(b) All proceedings at the tabulating center and precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the superintendent or the superintendent's authorized deputy shall touch any ballot, any DRE unit, or the tabulating equipment.

(c) After the polls have closed and all voting in the precinct has ceased, the poll manager shall shut down the DRE units and extract the election results from each unit as follows:

(1) The manager shall obtain the results tape from each DRE unit and verify that the number of ballots cast as recorded on the tape matches the public count number as displayed on the DRE unit;

(2) If a system is established by the Secretary of State, the poll manager shall first transmit the election results extracted from each DRE unit in each precinct via modem to the central tabulating center of the county; and

(3) The manager shall then extract the memory card from each DRE unit.

(d) Upon completion of shutting down each DRE unit and extracting the election results, the manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

(1) The number of valid ballots;

(2) The number of spoiled and invalid ballots;

(3) The number of provisional ballots; and

(4) The number of unused provisional ballots and any other unused ballots.

The manager shall cause to be placed in the ballot supply container one copy of the recap form and any unused, defective, spoiled, and invalid ballots, each enclosed in an envelope.

(e) The manager shall collect and retain the zero tape and the results tape for each DRE unit and place such tapes with the memory card for each unit, and all such items for all of the DRE units used in the precinct shall be sealed in an envelope or container and initialed or signed by the manager so that it cannot be opened without breaking the seal.

(f) The manager and one poll worker shall then deliver the envelope or container to the tabulating center for the county or municipality or to such other place designated by the superintendent and shall receive a receipt therefor. The copies of the recap forms, unused ballots, records, and other materials shall be returned to the designated location and retained as provided by law.

(g) Upon receipt of the sealed envelope or container containing the zero tapes, results tapes, and memory cards, the election superintendent shall verify the initials or signatures on the envelope. Once verified, the superintendent shall break the seal of the envelope or container and remove its contents. The superintendent shall then download the results stored on the memory card from each DRE unit into the election management system located at the central tabulation point of the county in order to obtain election results for certification.

History.
Code 1981, § 21-2-379.11, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 517, § 34; Ga. L. 2012, p. 995, § 25/SB 92.
Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Part 6

Electronic Balloting

Law reviews.
For article on the 2019 enactment of this part, see 36 Ga. St. U.L. Rev. 81 (2019).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 338.

21-2-379.21. Access to optical scanning voting systems for disabled.

Each polling place in this state utilizing optical scanning voting systems shall be equipped with at least one electronic ballot marker that meets the requirements as set forth in this part that is accessible to individuals with disabilities.

History.
Code 1981, § 21-2-379.21, enacted by Ga. L. 2019, p. 7, § 26/HB 316.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 338.

21-2-379.22. Requirements for electronic ballot marking.

No electronic ballot marker shall be adopted or used in primaries or elections in this state unless it shall, at the time, satisfy the following requirements:

(1) Provide facilities for marking ballots for all candidates and for all referendums or questions for which the elector shall be entitled to vote in a primary or election;

(2) Permit each elector, in one operation, to mark a vote for presidential electors for all the candidates of one party or body for the office of presidential elector;

(3) Permit each elector to mark votes, at any election, for any person and for any office for whom and for which he or she is lawfully entitled to vote, whether or not the name of such person or persons appears as a candidate for election; to mark votes for as many persons for an office as he or she is entitled to vote for; and to mark votes for or against any question upon which he or she is entitled to vote;

(4) Preclude the marking of votes for any candidate or upon any question for whom or upon which an elector is not entitled to vote; preclude the marking of votes for more persons for any office than the elector is entitled to vote for; and preclude the marking of votes for any candidate for the same office or upon any question more than once;

(5) Permit voting in absolute secrecy so that no person can see or know any other elector's votes, except when he or she has assisted the elector in voting, as prescribed by law;

(6) Produce a paper ballot which is marked with the elector's choices in a format readable by the elector;

(7) Be constructed of good quality material in a neat and workmanlike manner;

(8) When properly operated, mark correctly and accurately every vote cast;

(9) Be so constructed that an elector may readily learn the method of operating it; and

(10) Be safely transportable.

History.
Code 1981, § 21-2-379.22, enacted by Ga. L. 2019, p. 7, § 26/HB 316.

21-2-379.23. Requirements for ballot display; role of Secretary of State; printed paper ballot controls during recount; name and designation of precinct on ballot.

(a) The ballot display information and appearance on an electronic ballot marker shall conform as nearly as practicable to Code Sections 21-2-379.4 and 21-2-379.5.

(b) The form and arrangement of ballots marked and printed by an electronic ballot marker shall be prescribed by the Secretary of State.

(c) Notwithstanding any other law to the contrary, ballots marked and printed by an electronic ballot marker shall, at a minimum, contain:

(1) The words "OFFICIAL BALLOT";

(2) The name and date of the election;

(3) The titles of the respective offices for which the elector is eligible to vote;

(4) Words identifying the proposed constitutional amendments or other questions for which the elector is eligible to vote;

(5) The name of the candidate and, for partisan offices, indication of the candidate's political party or political body affiliation, or the answer to the proposed constitutional amendment or other question for which the elector intends to vote; and

(6) Clear indication that the elector has not marked a vote for any particular office, constitutional amendment, or other question.

(d) The paper ballot marked and printed by the electronic ballot marker shall constitute the official ballot and shall be used for, and govern the result in, any recount conducted pursuant to Code Section 21-2-495 and any audit conducted pursuant to Code Section 21-2-498.

(e) Each ballot printed by an electronic ballot marker shall include the name and designation of the precinct at the top.

History.
Code 1981, § 21-2-379.23, enacted by Ga. L. 2019, p. 7, § 26/HB 316; Ga. L. 2021, p. 14, § 23A/SB 202.

The 2021 amendment, effective March 25, 2021, added subsection (e).

Editor's notes.
Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked

choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-379.24. Examination of electronic ballot markers; revocation of approval; penalty to vendors for inappropriate sale; improvements or changes to devices; prohibition on pecuniary interest; limitation on public inspection.

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any electronic ballot marker may request that the Secretary of State examine the device. Any ten or more electors of this state may, at any time, request that the Secretary of State reexamine any such device previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination or reexamination. The Secretary of State shall publish and maintain on his or her website the cost of such examination or reexamination. The Secretary of State may, at any time, in his or her discretion, reexamine any such device.

(b) The Secretary of State shall thereupon examine or reexamine such device and shall make and file in his or her office a report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion, the kind of device so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If this report states that the device can be so used, the device shall be deemed approved, and devices of its kind may be adopted for use at primaries and elections as provided in this chapter.

(c) Any device that is not so approved shall not be used at any primary or election and if, upon reexamination, a previously approved device appears to be no longer safe or accurate for use by electors at primaries or elections as provided in this chapter because of an inability to accurately record votes, the approval of the same shall immediately be revoked by the Secretary of State, and no such device shall thereafter be used or purchased for use in this state.

(d) Any vendor who completes a sale of an electronic ballot marker that has not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of $100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have the authority to impose such penalty upon a finding that such a sale has occurred.

(e) When a device has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of such device, or of its kind.

(f) Neither the Secretary of State, nor any custodian, nor the governing authority of any county or municipality or a member of such governing authority nor any other person involved in the examination process shall have any pecuniary interest in any device or in the manufacture or sale thereof.

(g) Documents or information that, if made public, would endanger the security of any voting system used or being considered for use in this state, or any component thereof, including, but not limited to, electronic ballot markers, DREs, ballot scanners, pollbooks, and software or data bases used for voter registration, shall not be open for public inspection except upon order of a court of competent jurisdiction.

History.
Code 1981, § 21-2-379.24, enacted by Ga. L. 2019, p. 7, § 26/HB 316.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2019, "data bases" was substituted for "databases" in subsection (g).

21-2-379.25. Programming for ballot design and style; verification; appointment of custodians; role of custodians; testing of electronic ballot marker; public notice of testing.

(a) The superintendent of each county or municipality shall cause the proper ballot design and style to be programmed for each electronic ballot marker which is to be used in any precinct within such county or municipality, shall cause each such device to be placed in proper order for voting, and shall examine each device before it is sent to a polling place for use in a primary or election, to verify that each device is properly recording votes and producing proper ballots.

(b) The superintendent may appoint, with the approval of the county or municipal governing authority, as appropriate, a custodian of the electronic ballot markers, and deputy custodians as may be necessary, whose duty shall be to prepare the devices to be used in the county or municipality at the primaries and elections to be held therein. Each custodian and deputy custodian shall receive from the county or municipality such compensation as shall be fixed by the governing authority of such county or municipality. Such custodian shall, under the direction of the superintendent, have charge of and represent the superintendent during the preparation of the devices as required by this chapter. The custodian and deputy custodians shall serve at the pleasure of the superintendent and each shall take an oath of office prepared by the Secretary of State before each primary or election, which shall be filed with the superintendent.

(c) On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall have each electronic ballot marker tested to ascertain that it will correctly record the votes cast for all offices and on all questions and produce a ballot reflecting such choices of the elector in a manner that the State Election Board shall prescribe by rule or regulation. Public notice of the time and place of the test shall be made at least five days prior thereto. The superintendent of each county or municipality shall publish such notice on the homepage of the county's or municipality's publicly accessible website associated with elections, if the county or municipality maintains a publicly accessible website, and in a newspaper of general circulation in the county or municipality and by posting in a prominent location in the county or municipality. Such notice shall state the date, time, and place or places where preparation and testing of the voting system components for use in the primary or election will commence, that such preparation and testing shall continue from day to day until complete, and that representatives of political parties and bodies, news media, and the public shall be permitted to observe such tests. The superintendent of

the county or municipality shall also provide such notice to the Secretary of State who shall publish on his or her website the information received from superintendents stating the dates, times, and locations for preparation and testing of voting system components. However, such representatives of political parties and bodies, news media, and the public shall not in any manner interfere with the preparation and testing of voting system components. The advertisement in the newspaper of general circulation shall be prominently displayed, shall not be less than 30 square inches, and shall not be placed in the section of the newspaper where legal notices appear.

History.

Code 1981, § 21-2-379.25, enacted by Ga. L. 2019, p. 7, § 26/HB 316; Ga. L. 2021, p. 14, § 24/SB 202.

The 2021 amendment, effective March 25, 2021, rewrote subsection (c), which read: "On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall have each electronic ballot marker tested to ascertain that it will correctly record the votes cast for all offices and on all questions and produce a ballot reflecting such choices of the elector in a manner that the State Election Board shall prescribe by rule or regulation. Public notice of the time and place of the test shall be made at least five days prior thereto; provided, however, that, in the case of a runoff, the public notice shall be made at least three days prior thereto. Representatives of political parties and bodies, news media, and the public shall be permitted to observe such tests."

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting unifor-

mity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General As-

sembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-379.26. Storage of equipment.

(a) All electronic ballot markers and related equipment, when not in use, shall be properly stored and secured under conditions as shall be specified by the Secretary of State.

(b) The superintendent shall store the devices and related equipment under his or her supervision or shall designate another person or entity to provide secure storage of such devices and related equipment when it is not in use at a primary or election. The superintendent shall provide compensation for the safe storage and care of such devices and related equipment if the devices and related equipment are stored by another person or entity.

History.

Code 1981, § 21-2-379.26, enacted by Ga. L. 2019, p. 7, § 26/HB 316.

ARTICLE 10

ABSENTEE VOTING

Cross references.

Penalty for voting by absentee ballot without qualifying to vote in such manner, § 21-2-573.

Administrative rules and regulations.

Absentee Voting, Official Compilation of the Rules and Regulations of the State of Georgia, State Election Board, Georgia Election Code, Subject 183-1-14.

Law reviews.

For note, "Election Spotlight: Nearly Twenty Years After Hanging Chads, Problems Persist in Florida," see 71 Mercer L. Rev. 895 (2020).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

RESEARCH REFERENCES

ALR.

Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws, 97 A.L.R.2d 257.

21-2-380. "Absentee elector" defined; when reason for absentee ballot not required.

(a) As used in this article, the term "absentee elector" means an elector of this state or a municipality thereof who casts a ballot in a

primary, election, or runoff other than in person at the polls on the day of such primary, election, or runoff.

(b) An elector who votes by absentee ballot shall not be required to provide a reason in order to cast an absentee ballot in any primary, election, or runoff.

History.

Code 1933, § 34-1401, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 15; Ga. L. 1969, p. 329, § 17a; Ga. L. 1971, Ex. Sess., p. 61, § 9; Ga. L. 1979, p. 955, § 7; Ga. L. 1982, p. 1512, § 5; Ga. L. 1984, p. 1, § 8; Ga. L. 1987, p. 465, § 1; Ga. L. 1989, p. 1084, § 1; Ga. L. 1995, p. 417, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 35; Ga. L. 2005, p. 253, § 50/HB 244; Ga. L. 2008, p. 448, § 1/SB 387; Ga. L. 2010, p. 914, § 17/HB 540.

Cross references.

Right of persons hospitalized for mental illness, mental retardation, alcoholism, or other disabilities to vote by absentee ballot, §§ 37-3-144, 37-4-104 and 37-7-144.

Administrative rules and regulations.

Absentee ballot envelope; definition of advanced age; use of symbols, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.01.

JUDICIAL DECISIONS

For a history of O.C.G.A. § 21-2-380, see Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

Construction of subsection (a). — Subsection (a) of O.C.G.A. § 21-2-380 cannot be construed to require electors to have a specific reason to vote by absentee ballot. Thus, based on the legislative enactments as of December 2009, subsection (a) was rendered nugatory by the time of the 2009 run-off election. Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

Construction. — Plain language of O.C.G.A. § 21-2-381(b) requires that election officials verify the eligibility of absentee voters by one and only one criterion, their identification, and because O.C.G.A. §§ 21-2-380(b) and 21-2-381 are the later enacted statutes and reflect the General Assembly's repeated enactments over the past seven years to expand the scope and ease of absentee voting, the clear language of O.C.G.A. §§ 21-2-380(b) and 21-2-381 must control. Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

Impact of 2010 amendment. — General Assembly amended O.C.G.A. § 21-2-380 to formally delete the six reasons for absentee voting. Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

Electors not required to have reason to vote by absentee ballot. — Trial court erred in invalidating a runoff election for a seat on a city board of commissioners on the ground that under O.C.G.A. § 21-2-380(b) electors could vote by absentee ballot without stating whether the electors had one of the six reasons specified by § 21-2-380(a), but the electors had to have one of those reasons to be eligible to cast an absentee ballot because, at the time of the 2009 election, electors were not required to have a reason to vote by absentee ballot, and § 21-2-380(a) had been rendered nugatory by the time of the runoff election; § 21-2-380(a) cannot be construed to require electors to have a specific reason to vote by absentee ballot. Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 34-1335 and 34-3301, are included in the annotations for this Code section.

Election manager cannot take ballot to voter unable to go to polls. — An election manager in a primary election may not take a ballot to the home or place of business of a voter who is unable to go to the polls. 1945-47 Ga. Op. Att'y Gen. 255 (decided under former Code 1933, § 34-3301).

Absentee and regular electors to be treated similarly. — In deciding upon the proper method for determining whether persons have voted within the past three years, it is important that absentee electors and regular electors be treated as similarly as possible despite the varying procedures. 1974 Op. Att'y Gen. No. 74-133 (decided under former Code 1933, § 34-1335).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 333, 336.

C.J.S.
29 C.J.S., Elections, § 345 et seq.

21-2-380.1. Appointment of absentee ballot clerk.

The governing authority of a municipality shall appoint an absentee ballot clerk who may be the county registrar or any other designated official and who shall perform the duties set forth in this article.

History.
Code 1981, § 21-2-380.1, enacted by Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 12; Ga. L. 2001, p. 240, § 32; Ga. L. 2003, p. 151, § 1; Ga. L. 2017, p. 697, § 15/HB 268.

Law reviews.
For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

21-2-381. Making of application for absentee ballot; determination of eligibility by ballot clerk; furnishing of applications to colleges and universities; persons entitled to make application.

(a)(1)(A) Except as otherwise provided in Code Section 21-2-219 or for advance voting described in subsection (d) of Code Section 21-2-385, not earlier than 78 days or less than 11 days prior to the date of the primary or election, or runoff of either, in which the elector desires to vote, any absentee elector may make, either by mail, by facsimile transmission, by electronic transmission, or in person in the registrar's or absentee ballot clerk's office, an application for an official ballot of the elector's precinct to be voted at such primary, election, or runoff. To be timely received, an application for an absentee-by-mail ballot shall be received by the board of registrars or absentee ballot clerk no later than 11 days prior to the primary, election, or runoff. For advance voting in person, the

application shall be made within the time period set forth in subsection (d) of Code Section 21-2-385.

(B) In the case of an elector residing temporarily out of the county or municipality or a physically disabled elector residing within the county or municipality, the application for the elector's absentee ballot may, upon satisfactory proof of relationship, be made by such elector's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the age of 18 or over.

(C)(i) Any person applying for an absentee-by-mail ballot shall make application in writing on the form made available by the Secretary of State. In order to confirm the identity of the voter, such form shall require the elector to provide his or her name, date of birth, address as registered, address where the elector wishes the ballot to be mailed, and the number of his or her Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40. If such elector does not have a Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the elector shall affirm this fact in the manner prescribed in the application and the elector shall provide a copy of a form of identification listed in subsection (c) of Code Section 21-2-417. The form made available by the Secretary of State shall include a space to affix a photocopy or electronic image of such identification. The Secretary of State shall develop a method to allow secure electronic transmission of such form. The application shall also include the identity of the primary, election, or runoff in which the elector wishes to vote; the name and relationship of the person requesting the ballot if other than the elector; and an oath for the elector or relative to write his or her usual signature with a pen and ink affirming that the elector is a qualified Georgia elector and the facts presented on the application are true. Submitting false information on an application for an absentee ballot shall be a violation of Code Sections 21-2-560 and 21-2-571.

(ii) A blank application for an absentee ballot shall be made available online by the Secretary of State and each election superintendent and registrar, but neither the Secretary of State, election superintendent, board of registrars, other governmental entity, nor employee or agent thereof shall send absentee ballot applications directly to any elector except upon request of such elector or a relative authorized to request an absentee ballot for such elector. No person or entity other than a relative authorized to request an absentee ballot for such elector or a person signing

as assisting an illiterate or physically disabled elector shall send any elector an absentee ballot application that is prefilled with the elector's required information set forth in this subparagraph. No person or entity other than the elector, a relative authorized to request an absentee ballot for such elector, a person signing as assisting an illiterate or physically disabled elector with his or her application, a common carrier charged with returning the ballot application, an absentee ballot clerk, a registrar, or a law enforcement officer in the course of an investigation shall handle or return an elector's completed absentee ballot application. Handling a completed absentee ballot application by any person or entity other than as allowed in this subsection shall be a misdemeanor. Any application for an absentee ballot sent to any elector by any person or entity shall utilize the form of the application made available by the Secretary of State and shall clearly and prominently disclose on the face of the form:

> "This application is being distributed by [insert name and address of person, organization, or other entity distributing such document or material], not by any government agency or any state or local election office. THIS IS NOT A BALLOT."

(iii) The disclaimer required by division (ii) of this subparagraph shall be:

(I) Of sufficient font size to be clearly readable by the recipient of the communication;

(II) Contained in a printed box set apart from the other contents of the communication; and

(III) Printed with a reasonable degree of color contrast between the background and the printed disclaimer.

(D) Except in the case of physically disabled electors residing in the county or municipality or electors in custody in a jail or other detention facility in the county or municipality, no absentee ballot shall be mailed to an address other than the permanent mailing address of the elector as recorded on the elector's voter registration record or a temporary out-of-county or out-of-municipality address. Upon request, electors held in jails or other detention facilities who are eligible to vote shall be granted access to the necessary personal effects for the purpose of applying for and voting an absentee ballot pursuant to this chapter.

(E) Relatives applying for absentee ballots for electors must also sign an oath stating that facts in the application are true.

(F) If the elector is unable to fill out or sign such elector's own application because of illiteracy or physical disability, the elector

shall make such elector's mark, and the person filling in the rest of the application shall sign such person's name below it as a witness.

(G) Any elector meeting criteria of advanced age or disability specified by rule or regulation of the State Election Board or any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, may request in writing on one application a ballot for a presidential preference primary held pursuant to Article 5 of this chapter and for a primary as well as for any runoffs resulting therefrom and for the election for which such primary shall nominate candidates as well as any runoffs resulting therefrom. If not so requested by such person, a separate and distinct application shall be required for each primary, run-off primary, election, and run-off election. Except as otherwise provided in this subparagraph, a separate and distinct application for an absentee ballot shall always be required for any special election or special primary.

(2) A properly executed registration card submitted under the provisions of subsection (b) of Code Section 21-2-219, if submitted within 180 days of a primary or election in which the registrant is entitled to vote, shall be considered to be an application for an absentee ballot under this Code section, or for a special absentee ballot under Code Section 21-2-381.1, as appropriate.

(3)(A) All persons or entities, other than the Secretary of State, election superintendents, boards of registrars, and absentee ballot clerks, that send applications for absentee ballots to electors in a primary, election, or runoff shall mail such applications only to individuals who have not already requested, received, or voted an absentee ballot in the primary, election, or runoff. Any such person or entity shall compare its mail distribution list with the most recent information available about which electors have requested, been issued, or voted an absentee ballot in the primary, election, or runoff and shall remove the names of such electors from its mail distribution list. A person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed.

(B) A person or entity in violation of subparagraph (A) of this paragraph shall be subject to sanctions by the State Election Board which, in addition to all other possible sanctions, may include requiring such person or entity to pay restitution to each affected county or municipality in an amount up to $100.00 per duplicate absentee ballot application that is processed by the

county or municipality due to such violation or the actual cost incurred by each affected county or municipality for the processing of such duplicate absentee ballot applications.

(4) In extraordinary circumstances as described in Code Section 21-2-543.1, the registrar or absentee ballot clerk shall determine if the applicants are eligible to vote under this Code section and shall either mail or issue the absentee ballots for the election for representative in the United States Congress to an individual entitled to make application for absentee ballot under subsection (d) of this Code section the same day any such application is received, so long as the application is received by 3:00 P.M., otherwise no later than the next business day following receipt of the application. Any valid absentee ballot shall be accepted and processed so long as the ballot is received by the registrar or absentee ballot clerk not later than 45 days after the ballot is transmitted to the absent uniformed services voter or overseas voter, but in no event later than 11 days following the date of the election.

(b)(1) Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk shall enter thereon the date received. The registrar or absentee ballot clerk shall verify the identity of the applicant and determine, in accordance with the provisions of this chapter, if the applicant is eligible to vote in the primary or election involved. In order to verify the identity of the applicant, the registrar or absentee ballot clerk shall compare the applicant's name, date of birth, and number of his or her Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40 on the application with the information on file in the registrar's office. If the application does not contain the number of the applicant's Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the registrar or absentee ballot clerk shall verify that the identification provided with the application identifies the applicant. In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 and the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office.

(2) If found eligible, the registrar or absentee ballot clerk shall certify by signing in the proper place on the application and then:

(A) Shall mail the ballot as provided in this Code section;

(B) If the application is made in person, shall issue the ballot to the elector within the confines of the registrar's or absentee ballot clerk's office as required by Code Section 21-2-383 if the ballot is

issued during the advance voting period established pursuant to subsection (d) of Code Section 21-2-385; or

(C) May deliver the ballot in person to the elector if such elector is confined to a hospital.

(3) If found ineligible or if the application is not timely received, the clerk or the board of registrars shall deny the application by writing the reason for rejection in the proper space on the application and shall promptly notify the applicant in writing of the ground of ineligibility, a copy of which notification should be retained on file in the office of the board of registrars or absentee ballot clerk for at least one year. However, an absentee ballot application shall not be rejected solely due to a mismatch between the identifying information of the elector on the application and the identifying information of the elector on file with the board of registrars. In such cases, the board of registrars or absentee ballot clerk shall send the elector a provisional absentee ballot with the designation "Provisional Ballot" on the outer oath envelope and information prepared by the Secretary of State as to the process to be followed to cure the discrepancy. If such ballot is returned to the board of registrars or absentee ballot clerk prior to the closing of the polls on the day of the primary or election, the elector may cure the discrepancy by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted as other absentee ballots. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be insufficient, then the procedure contained in Code Section 21-2-386 shall be followed for rejected absentee ballots.

(4) If the registrar or clerk is unable to determine the identity of the elector from information given on the application or if the application is not complete or if the oath on the application is not signed, the registrar or clerk should promptly contact the elector in writing to request the necessary additional information and a signed copy of the oath.

(5) In the case of an unregistered applicant who is eligible to register to vote, the clerk or the board shall immediately mail a blank registration card as provided by Code Section 21-2-223, and such applicant, if otherwise qualified, shall be deemed eligible to vote by absentee ballot in such primary or election, if the registration card, properly completed, is returned to the clerk or the board on or before the last day for registering to vote in such primary or election.

(c) In those counties or municipalities in which the absentee ballot clerk or board of registrars provides application forms for absentee ballots, the clerk or board shall provide such quantity of the application form to the dean of each college or university located in that county as said dean determines necessary for the students of such college or university.

(d)(1) A citizen of the United States permanently residing outside the United States is entitled to make application for an absentee ballot from Georgia and to vote by absentee ballot in any election for presidential electors and United States senator or representative in Congress:

(A) If such citizen was last domiciled in Georgia immediately before his or her departure from the United States; and

(B) If such citizen could have met all qualifications, except any qualification relating to minimum voting age, to vote in federal elections even though, while residing outside the United States, he or she does not have a place of abode or other address in Georgia.

(2) An individual is entitled to make application for an absentee ballot under paragraph (1) of this subsection even if such individual's intent to return to Georgia may be uncertain, as long as:

(A) He or she has complied with all applicable Georgia qualifications and requirements which are consistent with 52 U.S.C. Section 20301 concerning absentee registration for and voting by absentee ballots;

(B) He or she does not maintain a domicile, is not registered to vote, and is not voting in any other state or election district of a state or territory or in any territory or possession of the United States; and

(C) He or she has a valid passport or card of identity and registration issued under the authority of the Secretary of State of the United States or, in lieu thereof, an alternative form of identification consistent with 52 U.S.C. Section 20301 and applicable state requirements, if a citizen does not possess a valid passport or card of identity and registration.

(e) The State Election Board is authorized to promulgate reasonable rules and regulations for the implementation of paragraph (1) of subsection (a) of this Code section. Said rules and regulations may include provisions for the limitation of opportunities for fraudulent application, including, but not limited to, comparison of voter registration records with death certificates.

History.

Ga. L. 1924, p. 186, §§ 3, 6; Code 1933, §§ 34-3302, 34-3305; Ga. L. 1943, p. 228, § 1; Ga. L. 1955, p. 204, §§ 1, 2; Ga. L. 1955, p. 732, §§ 1, 2; Ga. L. 1957, p. 39, § 1; Code 1933, § 34-1402, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, §§ 18-20; Ga. L. 1974, p. 71, §§ 1-3; Ga. L. 1977, p. 550, § 1; Ga. L. 1978, p. 1004, § 31; Ga. L. 1979, p. 633, § 1; Ga. L. 1981, p. 1718, § 7; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 1, § 11; Ga. L. 1985, p. 632, § 3; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 932, § 5; Ga. L. 1987, p. 417, § 4; Ga. L. 1987, p. 1360, § 14; Ga. L. 1988, p. 641, § 1; Ga. L. 1989, p. 849, § 2; Ga. L. 1989, p. 1742, § 1; Ga. L. 1990, p. 143, § 3; Ga. L. 1992, p. 1815, § 2; Ga. L. 1994, p. 1406, § 22; Ga. L. 1994, p. 1443, § 4; Ga. L. 1995, p. 8, § 1; Ga. L. 1997, p. 649, § 4; Ga. L. 1997, p. 662, § 1; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 11; Ga. L. 2001, p. 230, § 13; Ga. L. 2001, p. 240, § 33; Ga. L. 2003, p. 517, § 36; Ga. L. 2005, p. 253, § 51/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2008, p. 448, §§ 2, 3/SB 387; Ga. L. 2008, p. 781, § 10/HB 1112; Ga. L. 2009, p. 41, § 1/SB 47; Ga. L. 2010, p. 569, § 2/HB 1073; Ga. L. 2010, p. 914, § 18/HB 540; Ga. L. 2011, p. 683, § 10/SB 82; Ga. L. 2011, p. 697, § 1/HB 92; Ga. L. 2017, p. 697, § 16/HB 268; Ga. L. 2019, p. 7, § 27/HB 316; Ga. L. 2021, p. 14, § 25/SB 202; Ga. L. 2023, p. 614, § 2/SB 129, effective July 1, 2023; Ga. L. 2023, p. 730, § 2(5)/HB 475, effective July 1, 2023.

The 2021 amendment, effective July 1, 2021, in subparagraph (a)(1)(A), substituted "or for advance voting described in subsection (d) of Code Section 21-2-385, not earlier than 78 days or less than 11 days" for "not more than 180 days" near the beginning and added the last sentence; rewrote subparagraph (a)(1)(C), which read: "The application shall be in writing and shall contain sufficient information for proper identification of the elector; the permanent or temporary address of the elector to which the absentee ballot shall be mailed; the identity of the primary, election, or runoff in which the elector wishes to vote; and the name and relationship of the person requesting the ballot if other than the elector."; added the last sentence of subparagraph (a)(1)(D); substituted the present provisions of paragraph (a)(3) for "Reserved."; rewrote paragraph (b)(1), which read: "Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk shall enter thereon the date received. The registrar or absentee ballot clerk shall determine, in accordance with the provisions of this chapter, if the applicant is eligible to vote in the primary or election involved. In order to be found eligible to vote an absentee ballot by mail, the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office and, if the application is signed by the elector, compare the signature or mark of the elector on the application with the signature or mark of the elector on the elector's voter registration card. In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 and the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office."; in paragraph (b)(3), inserted "or if the application is not timely received" near the beginning, substituted "rejected solely due to a mismatch between the identifying information of the elector on the application and the identifying information" for "rejected due to an apparent mismatch between the signature of the elector on the application and the signature" in the second sentence, and deleted "signature" preceding "discrepancy" at the end of the third sentence and near the middle of the fourth sentence; rewrote paragraph (b)(4), which read: "If the registrar or clerk is unable to determine the identity of the elector from information given on the application, the registrar or clerk should promptly write to request additional information."; and deleted the former last sentence in paragraph (b)(5), which read: "If the closing date for registration in the primary or election concerned has not passed, the clerk or registrar shall also mail a ballot to the applicant, as soon as it is prepared

and available; and the ballot shall be cast in such primary or election if returned to the clerk or board not later than the close of the polls on the day of the primary or election concerned."

The 2023 amendments.

The first 2023 amendment, effective July 1, 2023, substituted the present language of the undesignated language following division (a)(1)(C)(ii) for the former language, which read: "This is NOT an official government publication and was NOT provided to you by any governmental entity and this is NOT a ballot. It is distributed by [insert name and address of person, organization, or other entity distributing such document of material]"; substituted "Contained" for "Be contained" at the beginning of subdivision (a)(1)(C)(iii)(II); and substituted "Printed" for "Be printed" at the beginning of subdivision (a)(1)(C)(iii)(III). The second 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "Contained" for "Be contained" at the beginning of subdivision (a)(1)(C)(iii)(II) and "Printed" for "Be printed" at the beginning of subdivision (a)(1)(C)(iii)(III).

Code Commission notes.

Pursuant to Code Section 28-9-3, in 2011, the amendment of paragraph (b)(2) of this Code section by Ga. L. 2011, p. 683, § 10/SB 82, was treated as impliedly repealed and superseded by Ga. L. 2011, p. 697, § 1/HB 92, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2023, "of advanced age" was substituted for "of advance age" in subparagraph (a)(1)(G) and "52 U.S.C. Section 20301" was substituted for "42 USC Section 1973ff" in subparagraphs (a)(1)(G), (d)(2)(A), and (d)(2)(C).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Absentee ballot envelope, definition of advanced age, use of symbols, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.01.

Law reviews.

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

JUDICIAL DECISIONS

Impact of 2010 amendment. — General Assembly amended O.C.G.A. § 21-2-381(a)(1)(C) by deleting the requirement that the elector state "the reason for requesting the absentee ballot, if applicable". Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

Construction. — Plain language of O.C.G.A. § 21-2-381(b) requires that election officials verify the eligibility of absentee voters by one and only one criterion, their identification, and because O.C.G.A. §§ 21-2-380(b) and 21-2-381 are the later enacted statutes and reflect the General Assembly's repeated enactments over the past seven years to expand the scope and ease of absentee voting, the clear language of O.C.G.A. §§ 21-2-380(b) and 21-2-381 must control. Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

Standing. — Former jail inmate lacked standing to assert a claim that an absentee voting statute, O.C.G.A. § 21-2-381(a)(1)(D), was unconstitutionally applied to deny absentee ballots to inmates; the inmate's failure to receive a ballot was not fairly traceable to application of the statute as the inmate's application for an absentee ballot did not provide the jail's address. Swann v. Sec'y, 668 F.3d 1285, 2012 U.S. App. LEXIS 1967 (11th Cir. 2012).

Invalidation of election reversed on appeal. — Trial court erred by invalidating an election for sheriff and ordering a new election because the evidence of systemic misconduct for vote buying and alleged wrongful distribution of absentee ballots was speculative and insufficient to support the trial court's conclusion that irregularities cause doubt on the results. Meade v. Williamson, 293 Ga. 142, 745 S.E.2d 279, 2013 Ga. LEXIS 502 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Georgia resident who moves within 30 days of election eligible to vote absentee. — A citizen of Georgia who moves to another state, beginning residence therein after the thirtieth day next preceding the election for President and Vice-President, should be permitted to register to vote for such officers up to 14 days prior to the election, and to vote, either in person, or by absentee ballot, assuming the person satisfied the requirements for absentee voting. 1972 Op. Att'y Gen. No. U72-51.

County board of registrars may require additional information. — Former Code 1933, § 34-1402 (see now O.C.G.A. § 21-2-381) requires an application for an absentee voter's ballot to contain certain information, but also allows a county board of registrars to require additional information. 1970 Op. Att'y Gen. No. U70-169.

Absentee elector who is within the state must apply for the elector's own ballot, although the elector may do so by mail as well as in person. 1974 Op. Att'y Gen. No. 74-54.

Number of applications obtainable. — It is permissible for an individual to obtain numerous absentee ballot applications from the county registrar, but the county registrar may limit the number of

applications to prevent waste and for other similar considerations. 1984 Op. Att'y Gen. No. 84-73.

One applying for ballot must bear proper relationship to absentee elector. — The board of registrars may and should refuse to issue a ballot for an absentee elector when the application is made by anyone not bearing the proper relationship to the elector. 1968 Op. Att'y Gen. No. 68-85.

Delivery of ballot to another not authorized. — Former Code 1933, § 34-1402 (see now O.C.G.A. § 21-2-381) did not authorize the actual delivery of an absentee ballot to one other than the elector. 1970 Op. Att'y Gen. No. U70-155.

Delivery of ballots to hospitalized individuals. — Registrars may deliver absentee ballots to individuals hospitalized on the date of a primary or election or at times prior to the primary or election. 1990 Op. Att'y Gen. No. 90-30.

Request for all information sought by registration provisions. — Where there is an absence of information on a registration card, and a consequent lack of correspondence between that source of information and the information provided on the completed absentee ballot application, the registrar may properly request the absentee ballot applicants to furnish all the information which is sought by former Code 1933 §§ 34-614 and 34A-509 (see now O.C.G.A. § 21-2-217) in the event the applicant does not furnish the requested information, the applicant's application may be rejected. 1976 Op. Att'y Gen. No. 76-2.

Incomplete registration card may make applicant ineligible to vote. — If upon examination of an application for absentee ballot, the appropriate officer ascertains that the supporting registration card is incomplete by reason of the absence of the required signature, the officer should determine the applicant to be ineligible and proceed accordingly. 1976 Op. Att'y Gen. No. 76-2.

Where the appropriate officer, upon examination of the registration card supporting an application for absentee ballot, found the registration complete as to signature but incomplete as to other information required by the statutory form, and where by executing the oath prescribed by the registration card the applicant furnished information, albeit incomplete, as to both the applicant's identity and the applicant's qualifications to vote, a summary finding under former Code 1933, § 34-1402(b) (see now O.C.G.A. § 21-2-381(b)) that the applicant for an absentee ballot was ineligible to vote was precluded. 1976 Op. Att'y Gen. No. 76-2.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 337.

C.J.S.

29 C.J.S., Elections, § 345 et seq.

ALR.

Voting by persons in the military service, 140 A.L.R. 1100; 147 A.L.R. 1443; 148 A.L.R. 1402; 149 A.L.R. 1466; 150 A.L.R. 1460; 151 A.L.R. 1464; 152 A.L.R. 1459; 153 A.L.R. 1434; 154 A.L.R. 1459; 155 A.L.R. 1459.

State voting rights of residents of federal military establishment, 34 A.L.R.2d 1193.

21-2-381.1. Procedures for voting with special write-in absentee ballots by qualified absentee electors.

(a) Notwithstanding any other provisions of this chapter, a qualified absentee elector, as defined in Code Section 21-2-380, in general, special, primary, and run-off elections, who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, and who makes timely application for but does not receive an official absentee ballot may vote by completing, signing, and mailing a federal

write-in absentee ballot promulgated under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended.

(b)(1) Any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, when voting a federal write-in absentee ballot for a federal general, special, or run-off election, may designate a candidate by writing in the name of the candidate or by writing in a party preference for each office. A written designation of the political party shall be counted as a vote for the candidate of that party.

(2) Except as provided in paragraph (3) of this subsection, an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting. In a general, special, or run-off election, the elector may alternatively designate a candidate by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person who the elector prefers for each office. A written designation of the political party shall be counted as a vote for the candidate of that party. In addition, such elector may vote on any constitutional amendment or question presented to the electors in such election by identifying the constitutional amendment or question with regard to which such elector desires to vote and specifying the elector's vote on such amendment or question.

(3) If the elector is voting in a primary or primary runoff, the elector shall identify the political party for which the elector has requested a ballot in the appropriate section of the federal write-in absentee ballot. A vote cast by writing in the name of a candidate who is not affiliated with the identified political party ballot is void and shall not be counted.

(c) Except as otherwise provided in this Code section, a federal write-in absentee ballot shall be submitted and processed in the same manner as provided for official absentee ballots. A federal write-in absentee ballot of any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, shall not be counted:

(1) In the case of a ballot submitted by an overseas elector who is not an absent uniformed services elector, if the ballot is submitted from any location in the United States;

(2) If the application of an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, for an absentee ballot is received by the appropriate board of registrars after two days prior to a general, special, primary, or run-off election; or

(3) If an official absentee ballot of an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, is received by the appropriate board of registrars not later than the deadline for receipt of absentee ballots under subparagraph (a)(1)(G) of Code Section 21-2-386.

(d) The following rules shall apply with respect to federal write-in absentee ballots:

(1) In completing the ballot, an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party;

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved; and

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the elector can be ascertained.

(e) Any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, who submits a federal write-in absentee ballot and later receives an official absentee ballot, may submit the official absentee ballot. An elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, who submits a federal write-in absentee ballot and later receives and submits an official absentee ballot should make every reasonable effort to inform the appropriate board of registrars that the elector has submitted more than one ballot.

History.

Code 1981, § 21-2-381.1, enacted by Ga. L. 1984, p. 1, § 12; Ga. L. 1986, p. 772, § 5; Ga. L. 1987, p. 1360, § 15; Ga. L. 1997, p. 590, § 31; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 569, § 3/HB 1073; Ga.

L. 2011, p. 683, § 11/SB 82.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2023, "52 U.S.C. Section 20301" was substituted for "42 U.S.C. Section 1973ff" in two places in subsection (a), in paragraphs (b)(1) and (b)(2), in the introductory language in subsection (c), in paragraphs (c)(2), (c)(3), (d)(1), and in two places in subsection (e).

21-2-381.2. State write-in absentee ballot for certain electors.

(a) The Secretary of State shall design a state write-in absentee ballot for federal offices and state offices that are voted upon on a state-wide basis for use in a primary runoff or election runoff by an eligible absentee elector who lives outside the county or municipality in which the election is held and who is:

(1) A member of the armed forces of the United States, a member of the merchant marine of the United States, a member of the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, or a spouse or dependent of such member residing with or accompanying said member; or

(2) A citizen of the United States residing outside the United States.

(b) Such state write-in absentee ballot shall be automatically included with any absentee ballot sent to such eligible absentee electors for any general primary or general election. No special request for such state write-in absentee ballot shall be required.

(c) The state write-in absentee ballot shall contain instructions for completing and returning such ballot.

(d) The Secretary of State shall establish a website which such eligible absentee electors may access to determine if there is a primary runoff or election runoff for a federal office or a state office that is voted upon on a state-wide basis. The address of such website shall be included in the instructions for voting such state write-in absentee ballot.

(e) The State Election Board may provide by rule or regulation for additional means of transmitting the state write-in absentee ballot to eligible absentee electors, including, but not limited to, the use of facsimile transmissions and portable document format electronic versions.

(f) The registrars shall send a regular absentee ballot to such eligible absentee electors in accordance with Code Section 21-2-381. In the event that both the regular absentee ballot and the state write-in absentee ballot are received by the registrars within the time period for receiving absentee ballots, the regular absentee ballot shall be counted and the state write-in absentee ballot shall be kept unopened in the

same manner as absentee ballots that are returned too late to be counted. Ballots for primary runoffs and election runoffs that are postmarked by the date of the primary runoff or election runoff, if proper in all other respects, shall be counted if received by the registrars within the three-day period following such primary runoff or election runoff.

History.

Code 1981, § 21-2-381.2, enacted by Ga. L. 2005, p. 253, § 52/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2023, p. 730, § 2(6)/HB 475, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, inserted a comma following "electors" in subsection (e).

Administrative rules and regulations.

State write-in absentee ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.05.

21-2-382. Additional buildings as additional registrar's office or place of registration for receiving absentee ballots and for advance voting; drop boxes.

(a) Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of advance voting under Code Section 21-2-385, provided that any such site is a building that is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a building that is used as an election day polling place, notwithstanding that such building is not a government building.

(b) Any other provisions of this chapter to the contrary notwithstanding, in all counties of this state having a population of 550,000 or more according to the United States decennial census of 1990 or any future such census, any building that is a branch of the county courthouse or courthouse annex established within any such county shall be an additional registrar's or absentee ballot clerk's office or place of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of advance voting under Code Section 21-2-385.

(c)(1) A board of registrars or absentee ballot clerk shall establish at least one drop box as a means for absentee by mail electors to deliver their ballots to the board of registrars or absentee ballot clerk. A board of registrars or absentee ballot clerk may establish additional drop boxes, subject to the limitations of this Code section, but may only establish additional drop boxes totaling the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county. Any additional

drop boxes shall be evenly geographically distributed by population in the county. Drop boxes established pursuant to this Code section shall be established at the office of the board of registrars or absentee ballot clerk or inside locations at which advance voting, as set forth in subsection (d) of Code Section 21-2-385, is conducted in the applicable primary, election, or runoff and may be open during the hours of advance voting at that location. Such drop boxes shall be closed when advance voting is not being conducted at that location. All drop boxes shall be closed when the advance voting period ends, as set forth in subsection (d) of Code Section 21-2-385. The drop box location shall have adequate lighting and be under constant surveillance by an election official or his or her designee, law enforcement official, or licensed security guard. During an emergency declared by the Governor pursuant to Code Section 38-3-51, drop boxes may be located outside the office of the board of registrars or absentee ballot clerk or outside of locations at which advance voting is taking place, subject to the other limitations of this Code section.

(2) The opening slot of a drop box shall not allow ballots to be tampered with or removed and shall be designed to minimize the ability for liquid or other substances that may damage ballots to be poured into the drop box. A drop box shall be labeled "OFFICIAL ABSENTEE BALLOT DROP BOX" and shall clearly display the signage developed by the Secretary of State pertaining to Georgia law with regard to who is allowed to return absentee ballots and destroying, defacing, or delaying delivery of ballots.

(3) The board of registrars or absentee ballot clerk shall arrange for the collecting and return of ballots deposited at each drop box at the conclusion of each day where advance voting takes place. Collection of ballots from a drop box shall be made by a team of at least two people. Any person collecting ballots from a drop box shall have sworn an oath in the same form as the oath for poll officers set forth in Code Section 21-2-95. The collection team shall complete and sign a ballot transfer form upon removing the ballots from the drop box which shall include the date, time, location, number of ballots, confirmation that the drop box was locked after the removal of the ballots, and the identity of each person collecting the ballots. The collection team shall then immediately transfer the ballots to the board of registrars or absentee ballot clerk, who shall process and store the ballots in the same manner as absentee ballots returned by mail are processed and stored. The board of registrars, absentee ballot clerk, or a designee of the board of registrars or absentee ballot clerk shall sign the ballot transfer form upon receipt of the ballots from the collection team. Such form shall be considered a public record pursuant to Code Section 50-18-70.

(4) At the beginning of voting at each advance location where a

drop box is present, the manager of the advance voting location shall open the drop box and confirm on the reconciliation form for that advance voting location that the drop box is empty. If the drop box is not empty, the manager shall secure the contents of the drop box and immediately inform the election superintendent, board of registrars, or absentee ballot clerk, who shall inform the Secretary of State.

History.

Code 1933, § 34-1406.1, enacted by Ga. L. 1979, p. 677, § 1; Ga. L. 1981, p. 534, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1992, p. 1208, § 1; Ga. L. 1995, p. 1027, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 11A; Ga. L. 2010, p. 914, § 19/HB 540; Ga. L. 2019, p. 7, § 28/HB 316; Ga. L. 2021, p. 14, § 26/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (a), deleted "additional sites as" following "registrars may establish" near the beginning, substituted "advance voting" for "voting absentee ballots", inserted "is a building that" near the middle, and substituted "building" for "location" in two places near the end; in subsection (b), inserted "building that is a" near the beginning, and substituted "advance voting" for "voting absentee ballots" near the end; and added subsection (c).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need

accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Additional sites as additional registrar's offices or places of registration for absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.08.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-383. Preparation and delivery of ballots; form of ballots; casting ballot in person using DRE unit; casting ballot in person or as absentee using electronic ballot markers.

(a) Ballots for use by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars or absentee ballot clerk as provided in Code Section 21-2-384. Such ballots shall be marked "Official Absentee Ballot" and shall be in substantially the form for ballots required by Article 8 of this chapter, except that in counties using voting machines or direct recording electronic (DRE) units the ballots may be in substantially the form for the ballot labels required by Article 9 of this chapter. Every such ballot shall have printed with other instructions thereon the following:

> "I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

The form for either ballot shall be determined and prescribed by the Secretary of State, except in municipal primaries or elections, in which the form of absentee ballots which follows the paper ballot format shall be determined and prescribed by the superintendent.

(b) Notwithstanding any other provision of this Code section, in jurisdictions in which direct recording electronic (DRE) voting systems are used at the polling places on election day, such direct recording electronic (DRE) voting systems shall be used for casting absentee ballots in person at a registrar's or absentee ballot clerk's office or in accordance with Code Section 21-2-382, providing for additional sites.

(c) Notwithstanding any other provision of this Code section to the contrary, in jurisdictions in which electronic ballot markers are used in the polling places on election day, such electronic ballot markers shall be used for casting absentee ballots in person at a registrar's or absentee ballot clerk's office or in accordance with Code Section 21-2-382, providing for additional sites.

History.
Code 1933, § 34-1403, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 15a; Ga. L. 1969, p. 329, § 21; Ga. L. 1997, p. 649, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 15, 38; Ga. L. 2003, p. 517, § 37; Ga. L. 2010, p. 914, § 20/HB 540; Ga. L. 2019, p. 7, § 29/HB 316.

Administrative rules and regulations.
Advance voting, Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.02.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.06.

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, §§ 340, 341.

C.J.S.

29 C.J.S., Elections, § 345 et seq.

21-2-384. Preparation and delivery of supplies; mailing of ballots; oath of absentee electors and persons assisting absentee electors; master list of ballots sent; challenges; special absentee run-off ballots; electronic transmission of ballots.

(a)(1) The superintendent shall, in consultation with the board of registrars or absentee ballot clerk, prepare, obtain, and deliver before the date specified in paragraph (2) of this subsection an adequate supply of official absentee ballots to the board of registrars or absentee ballot clerk for use in the primary or election or as soon as possible prior to a runoff. Envelopes and other supplies as required by this article may be ordered by the superintendent, the board of registrars, or the absentee ballot clerk for use in the primary or election.

(2) The board of registrars or absentee ballot clerk shall mail or issue official absentee ballots to all eligible applicants not more than 29 days but not less than 25 days prior to any presidential preference primary, general primary other than a municipal general primary, general election other than a municipal general election, or special primary or special election in which there is a candidate for a federal office on the ballot; 22 days prior to any municipal general primary or municipal general election; and as soon as possible prior to any runoff. In the case of all other special primaries or special elections, the board of registrars or absentee ballot clerk shall mail or issue official absentee ballots to all eligible applicants within three days after the receipt of such ballots and supplies, but no earlier than 22 days prior to the election; provided, however, that official absentee ballots shall be issued to any elector of the jurisdiction who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizen Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, beginning 49 days prior to a federal primary or election and not later than 45 days prior to a federal primary or election. As additional applicants who submitted timely applications for an absentee ballot are determined to be eligible, the board or clerk shall

mail or issue official absentee ballots to such additional applicants immediately upon determining their eligibility. For all timely received applications for absentee ballots, the board of registrars or absentee ballot clerk shall mail or issue absentee ballots, provisional absentee ballots, and notices of rejection as soon as possible upon determining their eligibility within the time periods set forth in this subsection. During the period for advance voting set forth in Code Section 21-2-385, the board of registrars or absentee ballot clerk shall make such determinations and mail or issue absentee ballots, provisional absentee ballots, and notices of rejection of application within three days after receiving a timely application for an absentee ballot. The board of registrars or absentee ballot clerk shall, within the time periods specified in this subsection, electronically transmit official absentee ballots to all electors who have requested to receive their official absentee ballot electronically and are entitled to vote such absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended.

(3) The date a ballot is voted in the registrar's or absentee ballot clerk's office or the date a ballot is mailed or issued to an elector and the date it is returned shall be entered on the application record therefor.

(4) Notwithstanding any other provision of this chapter, an elector confined in a hospital may make application for an absentee ballot on the day of a primary or election or during a ten-day period immediately preceding the day of such primary or election. Such application shall immediately be processed and, if such applicant is determined to be eligible, the board of registrars or absentee ballot clerk may deliver the absentee ballot to such elector.

(5) In the event an absentee ballot which has been mailed by the board of registrars or absentee ballot clerk is not received by the applicant, the applicant may notify the board of registrars or absentee ballot clerk and sign an affidavit stating that the absentee ballot has not been received. The board of registrars or absentee ballot clerk shall then issue a second absentee ballot to the applicant and cancel the original ballot issued. The affidavit shall be attached to the original application. A second application for an absentee ballot shall not be required.

(b) Except for ballots voted within the confines of the registrar's or absentee ballot clerk's office, in addition to the mailing envelope addressed to the elector, the superintendent, board of registrars, or absentee ballot clerk shall provide two envelopes for each official absentee ballot, of such size and shape as shall be determined by the Secretary of State, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two

envelopes to be enclosed in the mailing envelope shall be printed the words "Official Absentee Ballot" and nothing else. The larger of the two envelopes to be enclosed within the mailing envelope shall contain the form of oath of the elector and the oath for persons assisting electors, as provided for in subsection (c) of this Code section, and the penalties provided for in Code Sections 21-2-568, 21-2-573, 21-2-579, and 21-2-599 for violations of oaths; a place for the elector to print his or her name; a signature line; a space for the elector to print the number of his or her Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40; a space for the elector to mark to affirm that he or she does not have a Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40; a space for the elector to print his or her date of birth; and a space for the elector to print the last four digits of his or her social security number, if the elector does not have a Georgia driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40. The envelope shall be designed so that the number of the elector's Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the last four digits of the elector's social security number, and the elector's date of birth shall be hidden from view when the envelope is correctly sealed. Any person other than the elector who requested the ballot, an authorized person who is assisting the elector entitled to assistance in voting pursuant to subsection (c) of this Code section, an absentee ballot clerk, registrar, or law enforcement officer in the course of an investigation who knowingly unseals a sealed absentee ballot envelope shall be guilty of a felony. On the face of such envelope shall be printed the name and address of the board of registrars or absentee ballot clerk. The larger of the two envelopes shall also display the elector's name and voter registration number. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, the uniform instructions for the manner of preparing and returning the ballot, in form and substance as provided by the Secretary of State, provisional absentee ballot information, if necessary, and a notice in the form provided by the Secretary of State of all withdrawn, deceased, and disqualified candidates and any substitute candidates pursuant to Code Sections 21-2-134 and 21-2-155 and nothing else. The uniform instructions shall include information specific to the voting system used for absentee voting concerning the effect of overvoting or voting for more candidates than one is authorized to vote for a particular office and information concerning how the elector may correct errors in voting the ballot before it is cast including information on how to obtain a replacement ballot if the elector is unable to change the ballot or correct the error. The uniform instructions shall prominently include specific instructions stating that the elector shall mark his or her ballot in private and sign the oath by writing his or her usual signature with a pen and ink under penalty of

false swearing that the elector has not allowed any person to observe the marking of his or her ballot other than an authorized person lawfully assisting the elector if the elector is entitled to assistance, the elector's child under 18 years of age, or any child under 12 years of age and that the elector will not permit any unauthorized person to deliver or return the voted ballot to the board of registrars. The uniform instructions shall include a list of authorized persons who may deliver or return the voted ballot to the board of registrars on behalf of the elector as provided in subsection (a) of Code Section 21-2-385. The uniform instructions shall include the contact information of the Secretary of State which may be used by the elector to report any unauthorized person requesting to observe the elector voting his or her ballot or the elector's voted ballot or any unauthorized person offering to deliver or return the voted ballot to the board of registrars.

(c)(1) The oaths referred to in subsection (b) of this Code section shall be in substantially the following form:

I, the undersigned, do swear (or affirm) under penalty of false swearing that I am a citizen of the United States and of the State of Georgia; that I possess the qualifications of an elector required by the laws of the State of Georgia; that I am entitled to vote in the precinct containing my residence in the primary or election in which this ballot is to be cast; that I am eligible to vote by absentee ballot; that I have not marked or mailed any other absentee ballot, nor will I mark or mail another absentee ballot for voting in such primary or election; nor shall I vote therein in person; and that I have read and understand the instructions accompanying this ballot; that I have carefully complied with such instructions in completing this ballot; that I have marked and sealed this ballot in private and have not allowed any unauthorized person to observe the voting of this ballot or how this ballot was voted except those authorized under state and federal law; and that I will not give or transfer this ballot to any person not authorized by law to deliver or return absentee ballots. I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.

_____

Signature or Mark of Elector

_____

Printed Name of Elector

Oath of Person Assisting Elector (if any):

I, the undersigned, do swear (or affirm) that I assisted the above-named elector in marking such elector's absentee ballot as such elector personally communicated such elector's preference to me; and that such elector is entitled to receive assistance in voting under provisions of subsection (a) of Code Section 21-2-409.

This, the _____ day of _____, _____ .

_____
Signature of Person Assisting Elector

_____
Printed Name of Person Assisting Elector

Reason for assistance (Check appropriate square):
☐ Elector is unable to read the English language.
☐ Elector requires assistance due to physical disability.

The forms upon which such oaths are printed shall contain the following information:

> Georgia law provides that any person who knowingly falsifies information so as to vote illegally by absentee ballot or who illegally gives or receives assistance in voting, as specified in Code Section 21-2-568 or 21-2-573, shall be guilty of a felony.

(2) In the case of absent uniformed services or overseas voters, if the presidential designee under Section 705(b) of the federal Help America Vote Act promulgates a standard oath for use by such voters, the Secretary of State shall be required to use such oath on absentee ballot materials for such voters and such oath shall be accepted in lieu of the oath set forth in paragraph (1) of this subsection.

(d) Each board of registrars or absentee ballot clerk shall maintain for public inspection a master list, arranged by precincts, setting forth the name and residence of every elector to whom an official absentee ballot has been sent. Absentee electors whose names appear on the master list may be challenged by any elector prior to 5:00 P.M. on the day before absentee ballots are to begin being scanned and tabulated.

(e)(1) The election superintendent shall prepare special absentee run-off ballots for general primaries and general elections for use by qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq.

(2) Such special absentee run-off ballots for the general primary

shall list the titles of all offices being contested at the general primary and the candidates qualifying for such general primary for each office and shall permit the elector to vote in the general primary runoff by indicating his or her order of preference for each candidate for each office. A separate ballot shall be prepared for each political party, but a qualified elector under this subsection shall be mailed only the ballot of the political party in whose primary such elector requests to vote. The Secretary of State shall prepare instructions for use with such special absentee run-off ballots, including instructions for voting by mail using an electronically transmitted ballot. Such ballot shall be returned by the elector in the same manner as other absentee ballots by such electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq.

(3) Such special absentee run-off ballots for the general election shall list the titles of all offices being contested at the general election and the candidates qualifying for such general election for each office and shall permit the elector to vote in the general election runoff by indicating his or her order of preference for each candidate for each office.

(4) To indicate order of preference for each candidate for each office to be voted on, an elector shall put the numeral "1" next to the name of the candidate who is the elector's first choice for such office, the numeral "2" for the elector's second choice, and so forth, in consecutive numerical order, such that a numeral indicating the elector's preference is written by the elector next to each candidate's name on the ballot. An elector shall not be required to indicate preference for more than one candidate for an office if the elector so chooses.

(5) A special absentee run-off ballot shall be enclosed with each general primary absentee ballot sent to an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., along with instructions on how to cast the special absentee run-off ballot and the two envelopes to be used in returning such ballot as provided in subsection (b) of this Code section, provided that the envelopes bear the notation of "Official Overseas/Military General Primary Run-off Ballot." An elector shall be sent only the ballot containing the candidates of the political party in whose primary such elector desires to vote.

(6) A special absentee run-off ballot shall be enclosed with each general election absentee ballot sent to an elector entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., along with

instructions on how to cast the special absentee run-off ballot and the two envelopes to be used in returning such ballot as provided in subsection (b) of this Code section, provided that the envelopes bear the notation of "Official Overseas/Military General Election Run-off Ballot." The State Election Board shall by rule or regulation establish procedures for the transmission of blank absentee ballots by mail and by electronic transmission for all electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically, for use in county, state, and federal primaries, elections, and runoffs in this state and, if the Secretary of State finds it to be feasible, for use in municipal primaries, elections, and runoffs. If no preference is stated, the ballot shall be transmitted by mail. The State Election Board shall by rule or regulation establish procedures to ensure to the extent practicable that the procedures for transmitting such ballots shall protect the security and integrity of such ballots and shall ensure that the privacy of the identity and other personal data of such electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, to whom a blank absentee ballot is transmitted under this Code section is protected throughout the process of such transmission.

History.

Code 1933, §§ 34-1404, 34-1405, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 27; Ga. L. 1974, p. 71, §§ 4, 5; Ga. L. 1977, p. 684, § 1; Ga. L. 1977, p. 725, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1985, p. 206, § 1; Ga. L. 1985, p. 496, § 13; Ga. L. 1985, p. 632, § 4; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1987, p. 417, § 5; Ga. L. 1989, p. 643, § 9; Ga. L. 1990, p. 143, § 4; Ga. L. 1992, p. 1, § 2; Ga. L. 1992, p. 1815, § 3; Ga. L. 1995, p. 1027, § 9; Ga. L. 1997, p. 649, § 6; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 12; Ga. L. 2001, p. 230, § 14; Ga. L. 2003, p. 517, § 38; Ga. L. 2005, p. 253, § 53/HB 244; Ga. L. 2006, p. 888, § 3/HB 1435; Ga. L. 2007, p. 536, § 1/SB 40; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2010, p. 569, §§ 4, 5/HB 1073; Ga. L. 2011, p. 683, § 12/SB 82; Ga. L. 2011, p. 697, § 2/HB 92; Ga. L. 2012, p. 995, § 26/SB 92; Ga. L. 2017, p. 697, § 17/HB 268; Ga. L. 2019, p. 7, § 30/HB 316; Ga. L. 2021, p. 14, § 27/SB 202.

The 2021 amendment, effective July 1, 2021, rewrote paragraphs (a)(2) and (a)(4) and subsection (b); in paragraph (c)(1), in the first undesignated paragraph, inserted "under penalty of false swearing" near the beginning, deleted "and" following "accompanying this ballot;" and inserted the language beginning with "; that I have marked and sealed this ballot in private" at the end of the first sentence; substituted "the day before absentee ballots are to be scanned and tabulated" for "the day before the primary or election" at the end of subsection (d); and rewrote subsection (e).

Code Commission notes.

Pursuant to Code Section 28-9-3, in 2011, the amendment of subsection (a) of this Code section by Ga. L. 2011, p. 683, § 12/SB 82, was treated as impliedly repealed and superseded by Ga. L. 2011, p. 697, § 2/HB 92, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in

2023, "subsection (c) of this Code section" was substituted for "Code Section 21-2-409" in the third and fifth sentences in subsection (b).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia

law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Invalidation of election reversed on appeal. — Trial court erred by invalidating an election for sheriff and ordering a new election because the evidence of systemic misconduct for vote buying and alleged wrongful distribution of absentee ballots was speculative and insufficient to support the trial court's conclusion that irregularities cause doubt on the results. Meade v. Williamson, 293 Ga. 142, 745 S.E.2d 279, 2013 Ga. LEXIS 502 (2013).

Absentee ballot procedure inadequate to satisfy federal law. — State write-in absentee ballot that was sent to uniformed voters overseas by defendant State of Georgia, as part of the state's election scheme pursuant to O.C.G.A. § 21-2-384(a)(2), was merely a partial bal-

lot—without necessary candidate information—the transmission of which could not fulfill the 45 day deadline for transmitting a ballot to voters under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 42 U.S.C. 1973ff et seq. (now 52 U.S.C. Section 20301), as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009). United States v. Georgia, 892 F. Supp. 2d 1367, 2012 U.S. Dist. LEXIS 138451 (N.D. Ga. 2012).

OPINIONS OF THE ATTORNEY GENERAL

Delegation of responsibilities by board of registrars permissible. — Read together, former Code 1933, §§ 34-604 and 34-1405 (see now O.C.G.A. §§ 21-2-212 and 21-2-384) allow the conclusion that boards of registrars have authority to delegate to deputy registrars any tasks for which they are responsible under the Georgia Election Code. 1981 Op. Att'y Gen. No. 81-70.

When voting is complete. — Absentee elector has voted when the elector returns the ballot to the registrar with complete identifying information required by former Code 1933, § 44-1404 (see now O.C.G.A. § 21-2-384) so that the elector's name is placed upon the list of certified absentee electors as required by former Code 1933, § 34-1407 (see now O.C.G.A. § 21-2-386). 1974 Op. Att'y Gen. No. 74-133.

Public right to copy list of absentee names. — The right given to the public by the Election Code includes the right to copy the list of absentee names while in the proper official's office. 1968 Op. Att'y Gen. No. 68-450.

Inspection of returned absentee ballots prior to polls closing not required. — Boards of registrars are not required to make returned absentee ballots subject to inspection prior to the closing of the polls. 1990 Op. Att'y Gen. No. 90-31.

Delivery of ballots to hospitalized individuals. — Registrars may deliver absentee ballots to individuals hospitalized on the date of a primary or election or at times prior to the primary or election. 1990 Op. Att'y Gen. No. 90-30.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 338, 340.

C.J.S.
29 C.J.S., Elections, § 345 et seq.

21-2-385. Procedure for voting by absentee ballot; advance voting.

(a) At any time after receiving an official absentee ballot, but before the day of the primary or election, except electors who are confined to a hospital on the day of the primary or election, the elector shall vote his or her absentee ballot, then fold the ballot and enclose and securely seal the same in the envelope on which is printed "Official Absentee Ballot." This envelope shall then be placed in the second one, on which is printed the form of the oath of the elector; the name and oath of the

person assisting, if any; and other required identifying information. The elector shall then fill out, subscribe, and swear to the oath printed on such envelope. In order to verify that the absentee ballot was voted by the elector who requested the ballot, the elector shall print the number of his or her Georgia driver's license number or identification card issued pursuant to Article 5 of Chapter 5 of Title 40 in the space provided on the outer oath envelope. The elector shall also print his or her date of birth in the space provided in the outer oath envelope. If the elector does not have a Georgia driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the elector shall so affirm in the space provided on the outer oath envelope and print the last four digits of his or her social security number in the space provided on the outer oath envelope. If the elector does not have a Georgia driver's license, identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or a social security number, the elector shall so affirm in the space provided on the outer oath envelope and place a copy of one of the forms of identification set forth in subsection (c) of Code Section 21-2-417 in the outer envelope. Such envelope shall then be securely sealed and the elector shall then personally mail or personally deliver same to the board of registrars or absentee ballot clerk, provided that mailing or delivery may be made by the elector's mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or an individual residing in the household of such elector. The absentee ballot of a disabled elector may be mailed or delivered by the caregiver of such disabled elector, regardless of whether such caregiver resides in such disabled elector's household. The absentee ballot of an elector who is in custody in a jail or other detention facility may be mailed or delivered by any employee of such jail or facility having custody of such elector. An elector who is confined to a hospital on a primary or election day to whom an absentee ballot is delivered by the registrar or absentee ballot clerk shall then and there vote the ballot, seal it properly, and return it to the registrar or absentee ballot clerk. If the elector registered to vote for the first time in this state by mail and has not previously provided the identification required by Code Section 21-2-220 and votes for the first time by absentee ballot and fails to provide the identification required by Code Section 21-2-220 with such absentee ballot, such absentee ballot shall be treated as a provisional ballot and shall be counted only if the registrars are able to verify the identification and registration of the elector during the time provided pursuant to Code Section 21-2-419.

(b) A physically disabled or illiterate elector may receive assistance in preparing his or her ballot from any person of the elector's choice other than such elector's employer or the agent of such employer or an officer or agent of such elector's union; provided, however, that no person whose name appears on the ballot as a candidate at a particular primary, election, or runoff nor the mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of such candidate shall offer assistance during such primary, election, or runoff under the provisions of this Code section to any elector who is not related to such candidate. For the purposes of this subsection, the term "related to such candidate" shall mean such candidate's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law. The person rendering assistance to the elector in preparing the ballot shall sign the oath printed on the same envelope as the oath to be signed by the elector. Any person who willfully violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both, for each such violation.

(c) When an elector applies in person for an absentee ballot, after the absentee ballots have been printed, the absentee ballot may be issued to the elector at the time of the application therefor within the confines of the registrar's or absentee ballot clerk's office if such application is made during the advance voting period as provided in subsection (d) of this Code section or may be mailed to the elector, depending upon the elector's request. If the ballot is issued to the elector at the time of application, the elector shall then and there within the confines of the registrar's or absentee ballot clerk's office vote and return the absentee ballot as provided in subsections (a) and (b) of this Code section. In the case of persons voting in accordance with subsection (d) of this Code section, the board of registrars or absentee ballot clerk shall furnish accommodations to the elector to ensure the privacy of the elector while voting his or her absentee ballot.

(d)(1) There shall be a period of advance voting that shall commence:

(A) On the fourth Monday immediately prior to each primary or election; and

(B) As soon as possible prior to a runoff from any general primary or election but no later than the second Monday immediately prior to such runoff

and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted beginning at 9:00 A.M. and ending at 5:00 P.M. on weekdays, other than observed state holidays, during such period and shall be conducted on the second and third Saturdays during the hours of 9:00 A.M. through 5:00 P.M. and, if the registrar or absentee ballot clerk so chooses, the second Sunday, the third Sunday, or both the second and third Sundays prior to a primary or election during hours determined by the registrar or absentee ballot clerk, but no longer than 7:00 A.M. through 7:00 P.M.; provided, however, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election beginning at 9:00 A.M. and ending at 5:00 P.M. Except as otherwise provided in this paragraph, the registrars may extend the hours for voting to permit advance voting from 7:00 A.M. until 7:00 P.M. and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option; provided, however, that voting shall occur only on the days specified in this paragraph and counties and municipalities shall not be authorized to conduct advance voting on any other days.

(2) The registrars or absentee ballot clerk, as appropriate, shall provide reasonable notice to the electors of their jurisdiction of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted. In addition, the registrars or absentee ballot clerk shall notify the Secretary of State in the manner prescribed by the Secretary of State of the times, dates, and locations at which advance voting will be conducted.

(3) The board of registrars shall publish the dates, times, and locations of the availability of advance voting in its jurisdiction on the homepage of the county's publicly accessible website associated with

elections or registrations, or if the county does not have such a website, in a newspaper of general circulation, and by posting in a prominent location in the county, no later than 14 days prior to the beginning of the advance voting period for a general primary, special primary, general election, or special election and no later than seven days prior to the beginning of the advance voting period for any run-off election. Any new advance voting locations added after that deadline shall be published in the same manner as soon as possible. The board of registrars shall not remove any advance voting location after the notice of such location is published, except in the case of an emergency or unavoidable event that renders a location unavailable for use. Any changes that are made due to an emergency or unavoidable event after a notice of a location has been published shall be published as soon as possible in the same manner set forth in this paragraph.

(e) On each day of an absentee voting period, each county board of registrars or municipal absentee ballot clerk shall report for the county or municipality to the Secretary of State and post on the county or municipal website, or if the county or municipality does not maintain such a website, a place of public prominence in the county or municipality, not later than 10:00 A.M. on each business day the number of persons to whom absentee ballots have been issued, the number of persons who have returned absentee ballots, and the number of absentee ballots that have been rejected. Additionally, on each day of an advance voting period, each county board of registrars or municipal absentee ballot clerk shall report to the Secretary of State and post on the county or municipal website, or if the county or municipality does not maintain such a website, a place of public prominence in the county or municipality, not later than 10:00 A.M. on each business day the number of persons who have voted at the advance voting sites in the county or municipality. During the absentee voting period and for a period of three days following a primary, election, or runoff, each county board of registrars or municipal absentee ballot clerk shall report to the Secretary of State and post on the county or municipal website, or if the county or municipality does not maintain such a website, a place of public prominence in the county or municipality, not later than 10:00 A.M. on each business day the number of persons who have voted provisional ballots, the number of provisional ballots that have verified or cured and accepted for counting, and the number of provisional ballots that have been rejected.

History.

Ga. L. 1924, p. 186, § 4; Code 1933, § 34-3303; Ga. L. 1953, Jan.-Feb. Sess., p. 579, § 1; Ga. L. 1955, p. 204, § 3; Ga. L. 1955, p. 732, § 3; Ga. L. 1956, p. 682, §§ 3, 4; Code 1933, § 34-1406, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 119, § 1; Ga. L. 1968, p. 871, § 16; Ga. L. 1969, p. 329, § 22; Ga. L. 1974, p. 71, §§ 6-8; Ga. L. 1977, p. 683, § 1; Ga. L. 1980, p. 1256, § 4; Ga. L. 1981, p. 1718, § 8; Ga. L. 1983, p. 140, § 1; Ga. L. 1985, p. 496, § 14; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 932, § 6; Ga. L. 1988, p. 641, § 2; Ga. L. 1989, p. 1742, § 2; Ga. L. 1990, p. 143, § 5; Ga. L. 1992, p. 2510, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 39; Ga. L. 2006, p. 888, § 4/HB 1435; Ga. L. 2007, p. 536, § 2/SB 40; Ga. L. 2010, p. 914, § 21/HB 540; Ga. L. 2011, p. 697, § 3/HB 92; Ga. L. 2014, p. 1, § 6/HB 310; Ga. L. 2016, p. 173, § 4/SB 199; Ga. L. 2017, p. 697, § 18/HB 268; Ga. L. 2019, p. 7, § 31/HB 316; Ga. L. 2021, p. 14, § 28/SB 202.

The 2021 amendment, effective July 1, 2021, added the present fourth through seventh sentences in subsection (a); rewrote subsection (d); and added subsection (e).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all

involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Provisional absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.03.

Law reviews.

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34A-1006 are included in the annotations for this Code section.

Voter must remove stubs before mailing. — Unless stubs on ballots are removed by a voter prior to being mailed, ballots are void. Nobles v. Osborne, 124 Ga. App. 454, 184 S.E.2d 207, 1971 Ga. App. LEXIS 963 (1971), cert. denied, 409 U.S. 853, 93 S. Ct. 183, 34 L. Ed. 2d 96, 1972 U.S. LEXIS 1362 (1972) (decided under former Code 1933, § 34A-1006).

Who may mail ballots for a voter. — In an election contest, the election winner was not entitled to attorney fees under O.C.G.A. § 9-15-14(a). Given the language of O.C.G.A. § 21-2-385(a) as to who could mail ballots for a voter, the complaint could not be described as lacking any justiciable issue of law or fact, and a sufficient number of ballots could have been found invalid so as to change the election result. Kendall v. Delaney, 283 Ga. 34, 656 S.E.2d 812, 2008 Ga. LEXIS 25 (2008).

Invalidation of election reversed on appeal. — Trial court erred by invalidating an election for sheriff and ordering a new election because the evidence of systemic misconduct for vote buying and alleged wrongful distribution of absentee ballots was speculative and insufficient to support the trial court's conclusion that irregularities cause doubt on the results. Meade v. Williamson, 293 Ga. 142, 745 S.E.2d 279, 2013 Ga. LEXIS 502 (2013).

Early voting rights. — Voter participation organizations did not articulate any specifics as to an injury as the officials' decision was used as a proxy for voter suppression or targeted at a protected class, and as no voter would be deprived of the right to vote, the organizations were not entitled to injunctive relief against a county's election officials regarding a statutory limitation on early voting rights. Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration & Elections, 484 F. Supp. 3d 1308, 2020 U.S. Dist. LEXIS 36702 (N.D. Ga. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Restrictions unenforceable in presidential preference primary. — The restrictions contained in O.C.G.A. § 21-2-409, limiting the class of persons permitted to assist disabled or illiterate electors at the polls, and the restrictions contained in O.C.G.A. § 21-2-385, limiting the class of persons permitted to assist disabled or illiterate electors voting by absentee ballot, cannot be enforced in the presidential preference primary nor can the limitations contained in these Code sections concerning the number of persons one individual may assist be enforced. 1984 Op. Att'y Gen. No. 84-15.

Delivery of ballots to hospitalized individuals. — Registrars may deliver absentee ballots to individuals hospitalized on the date of a primary or election or at times prior to the primary or election. 1990 Op. Att'y Gen. No. 90-30.

Possession of another voter's absentee ballot. — The mere possession of another voter's absentee ballot does not constitute unlawful possession of an absentee ballot under either O.C.G.A. § 21-2-385(a) or O.C.G.A. § 21-2-574. 2016 Op. Att'y Gen. No. 16-2.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 241, 243, 338.
C.J.S.
29 C.J.S., Elections, § 345 et seq.

ALR.
Validity, construction, and application of early voting statutes, 29 A.L.R.6th 343.

21-2-385.1. Preferential treatment for older and disabled voters.

During the period of advance voting established pursuant to subsection (d) of Code Section 21-2-385, each elector who is 75 years of age or older or who is disabled and requires assistance in casting an absentee ballot in person at the registrar's office, absentee ballot clerk's office, or other locations as provided for in Code Section 21-2-382 shall, upon request to a designated office employee or other individual, be authorized to vote immediately at the next available voting compartment or booth without having to wait in line if such location utilizes direct recording electronic voting systems or be authorized to go to the head of any line necessary to cast a written absentee ballot. Notice of the provisions of this Code section shall be prominently displayed in the registrar's office or absentee ballot clerk's office.

History.
Code 1981, § 21-2-385.1, enacted by Ga. L. 2008, p. 1157, § 1/HB 993; Ga. L. 2011, p. 697, § 4/HB 92.

21-2-386. Safekeeping, certification, and validation of absentee ballots; rejection of ballot; delivery of ballots to location designated by superintendent; duties of superintendent and managers; precinct returns; report of returns of verified and accepted absentee ballots cast as soon as possible following closing of polls; notification of challenged elector; unlawful disclosure of tabulation results.

(a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election except as otherwise provided in this subsection.

(B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the number of the elector's Georgia driver's license number or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40 and date of birth entered on the absentee ballot envelope with the same information contained in the elector's voter registration records. If the

elector has affirmed on the envelope that he or she does not have a Georgia driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the registrar or clerk shall compare the last four digits of the elector's social security number and date of birth entered on the envelope with the same information contained in the elector's voter registration records. The registrar or clerk shall also confirm that the elector signed the oath and the person assisting the elector, if any, signed the required oath. If the elector has signed the elector's oath, the person assisting has signed the required oath, if applicable, and the identifying information entered on the absentee ballot envelope matches the same information contained in the elector's voter registration record, the registrar or clerk shall so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

(C) If the elector has failed to sign the oath, or if the identifying information entered on the absentee ballot envelope does not match the same information appearing in the elector's voter registration record, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years. Such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot. The elector may cure a failure to sign the oath, nonmatching identifying information, or missing information by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of such period. The affidavit shall affirm that the ballot was submitted by the elector, is the elector's ballot, and that the elector is registered and qualified to vote in the primary, election, or runoff in question. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted.

(D) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who

votes for the first time in this state by absentee ballot shall include with his or her application for an absentee ballot or in the outer oath envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify the elector that such ballot is deemed a provisional ballot and shall provide information on the types of identification needed and how and when such identification is to be submitted to the board of registrars or absentee ballot clerk to verify the ballot.

(E) Three copies of the numbered list of voters shall also be prepared for such rejected absentee electors, giving the name of the elector and the reason for the rejection in each case. Three copies of the numbered list of certified absentee voters and three copies of the numbered list of rejected absentee voters for each precinct shall be turned over to the poll manager in charge of counting the absentee ballots and shall be distributed as required by law for numbered lists of voters.

(F) All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election shall be safely kept unopened by the board or absentee ballot clerk and then transferred to the appropriate clerk for storage for the period of time required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election. The board of registrars or absentee ballot clerk shall promptly notify the elector by first-class mail that the elector's ballot was returned too late to be counted and that the elector will not receive credit for voting in the primary or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

(G) Notwithstanding any provision of this chapter to the contrary, until the United States Department of Defense notifies the Secretary of State that the Department of Defense has imple-

mented a system of expedited absentee voting for those electors covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by eligible absentee electors who reside outside the county or municipality in which the primary, election, or runoff is held and are members of the armed forces of the United States, members of the merchant marine of the United States, spouses or dependents of members of the armed forces or merchant marine residing with or accompanying such members, or overseas citizens that are postmarked by the date of such primary, election, or runoff and are received within the three-day period following such primary, election, or runoff, if proper in all other respects, shall be valid ballots and shall be counted and included in the certified election results.

(2)(A) Beginning at 8:00 A.M. on the third Monday prior to the day of the primary, election, or runoff, the election superintendent shall be authorized to open the outer oath envelope of absentee ballots that have been verified and accepted pursuant to subparagraph (a)(1)(B) of this Code section, remove the contents of such outer envelope, open the inner envelope marked "Official Absentee Ballot," and scan the absentee ballot using one or more ballot scanners. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the absentee ballot envelopes are being opened and the absentee ballots are being scanned. However, no person shall tally, tabulate, estimate, or attempt to tally, tabulate, or estimate or cause the ballot scanner or any other equipment to produce any tally or tabulate, partial or otherwise, of the absentee ballots cast until the time for the closing of the polls on the day of the primary, election, or runoff except as provided in this Code section. Prior to beginning the process set forth in this paragraph, the superintendent shall provide written notice to the Secretary of State in writing at least seven days prior to processing and scanning absentee ballots. Such notice shall contain the dates, start and end times, and location or locations where absentee ballots will be processed and scanned. The superintendent shall also post such notice publicly in a prominent location in the superintendent's office and on the home page of the county election superintendent's website, if the county election superintendent maintains such a website. The Secretary of State shall publish on his or her website the information he or she receives from superintendents stating the dates, times, and locations where absentee ballots will be processed.

(B) The proceedings set forth in this paragraph shall be open to the view of the public, but no person except one employed and

designated by the superintendent shall touch any ballot or ballot container. Any person involved in processing and scanning absentee ballots shall swear an oath, in the same form as the oath for poll officers provided in Code Section 21-2-95, prior to beginning the processing and scanning of absentee ballots. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process. While viewing or monitoring the process set forth in this paragraph, monitors and observers shall be prohibited from:

(i) In any way interfering with the processing or scanning of absentee ballots or the conduct of the election;

(ii) Using or bringing into the room any photographic or other electronic monitoring or recording devices, cellular telephones, or computers;

(iii) Engaging in any form of campaigning or campaign activity;

(iv) Taking any action that endangers the secrecy and security of the ballots;

(v) Touching any ballot or ballot container;

(vi) Tallying, tabulating, estimating, or attempting to tally, tabulate, or estimate, whether partial or otherwise, any of the votes on the absentee ballots cast; and

(vii) Communicating any information that they see while monitoring the processing and scanning of the absentee ballots, whether intentionally or inadvertently, about any ballot, vote, or selection to anyone other than an election official who needs such information to lawfully carry out his or her official duties.

(C) The State Election Board shall promulgate rules requiring reconciliation procedures; prompt and undelayed scanning of ballots after absentee ballot envelopes are opened; secrecy of election results prior to the closing of the polls on the day of a primary, election, or runoff; and other protections to protect the integrity of the process set forth in this paragraph.

(3) A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff begin tabulating the absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary, election, or runoff, the Secretary of State of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process.

(4) The county election superintendent shall publish a written notice in the superintendent's office of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls and publish such notice at least one week prior to the primary, election, or runoff in the legal organ of the county.

(5) The process for opening absentee ballot envelopes, scanning absentee ballots, and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be conducted in a manner to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.

(6) All persons conducting the tabulation of absentee ballots during the day of a primary, election, or runoff, including the vote review panel required by Code Section 21-2-483, and all monitors and observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular telephones; shall not utilize computers for the purpose of email, instant messaging, or other forms of communication; and shall not communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory

and technical assistance personnel shall be permitted to enter and leave the area in which the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be placed into locked ballot boxes and may be transferred to locked ballot bags, if needed, for security. The persons conducting the tabulation of the absentee ballots shall not cause the tabulating equipment to produce any count, partial or otherwise, of the absentee votes cast until the time for the closing of the polls except as otherwise provided in this Code section.

(b) When requested by the superintendent, but not earlier than the third Monday prior to a primary, election, or runoff, a registrar or absentee ballot clerk shall deliver the official absentee ballot of each certified absentee elector, each rejected absentee ballot, applications for such ballots, and copies of the numbered lists of certified and rejected absentee electors to the location designated by the superintendent, and the superintendent or official receiving such absentee ballots shall issue his or her receipt therefor.

(c) The superintendent shall cause the verified and accepted absentee ballots to be opened and tabulated as provided in this Code section. A manager shall then open the outer envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope marked "Official Absentee Ballot" in a ballot box reserved for absentee ballots. In the event that an outer envelope is found to contain an absentee ballot that is not in an inner envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person sealing the inner envelope, and deposited in the ballot box and counted in the same manner as other absentee ballots, provided that such ballot is otherwise proper. Such manager with two assistant managers, appointed by the superintendent, with such clerks as the manager deems necessary shall count the absentee ballots following the procedures prescribed by this chapter for other ballots, insofar as practicable.

(d) All absentee ballots shall be counted and tabulated in such a manner that returns may be reported by precinct; and separate returns shall be made for each precinct in which absentee ballots were cast showing the results by each precinct in which the electors reside. The superintendent shall utilize the procedures set forth in this Code section to ensure that the returns of verified and accepted absentee

ballots cast are reported to the public as soon as possible following the closing of the polls on the day of the primary, election, or runoff. Failure to utilize these procedures to ensure that the returns of verified and accepted absentee ballots are reported as soon as possible following the close of polls shall subject the superintendent to sanctions by the State Election Board. If a superintendent fails to report the returns of verified and accepted absentee ballots by the day following the election at 5:00 P.M., the State Election Board may convene an independent performance review board pursuant to Code Section 21-2-107.

(e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall write "Challenged," the elector's name, and the alleged cause of challenge on the outer envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection. The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

(f) It shall be unlawful at any time prior to the close of the polls for any person to disclose or for any person to receive any information regarding the results of the tabulation of absentee ballots except as expressly provided by law.

History.

Ga. L. 1924, p. 186, §§ 11, 12, 14; Code 1933, §§ 34-3311, 34-3312, 34-3314; Ga. L. 1955, p. 204, § 5; Code 1933, § 34-1407, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 280, §§ 1, 2; Ga. L. 1974, p. 71, §§ 9-11; Ga. L. 1977, p. 725, § 2; Ga. L. 1978, p. 1004, § 32; Ga. L. 1979, p. 629, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1990, p. 143, § 6; Ga. L. 1992, p. 1, § 4; Ga. L. 1992, p. 1815, § 4; Ga. L. 1993, p. 118, § 1; Ga. L. 1997, p. 590, § 32; Ga. L. 1997, p. 662, § 2; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 16, 39; Ga. L. 1999, p. 29, § 2; Ga. L. 2001, p. 240, § 34; Ga. L. 2001, p. 269, § 21; Ga. L. 2003, p. 517, § 40; Ga. L. 2005, p. 253, § 54/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2007, p. 544, § 4/SB 194; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2008, p. 448, § 4/SB 387; Ga. L. 2009, p. 300, § 1/HB 86; Ga. L. 2011, p. 590, § 1/HB 143; Ga. L. 2011, p. 683, § 13/SB 82; Ga. L. 2012, p. 995, §§ 27, 28/SB 92; Ga. L. 2019, p. 7, § 32/HB 316; Ga. L. 2021, p. 14, § 29/SB 202.

The 2021 amendment, effective July 1, 2021, rewrote subparagraph (a)(1)(B); in subparagraph (a)(1)(C), substituted "the identifying information entered on the absentee ballot envelope does not match the same information appearing in the elector's vote registration record" for "the signature does not appear to be valid" near the beginning of the first sentence, and substituted "nonmatching identifying information" for "an invalid signature" near the beginning of the fourth sentence; rewrote paragraph (a)(2); deleted "open the inner envelopes in accordance with the procedures prescribed in this subsection and" following "election, or runoff" in the first sentence of paragraph (a)(3); in paragraph (a)(5), substituted "absentee ballot envelopes, scanning absentee ballots, and" for "the inner envelopes of and" and "conducted in a manner" for "a confidential process" in the first sentence; substituted "email" for "e-mail" in the second

sentence of paragraph (a)(6); and added "except as otherwise provided in this Code section" at the end of paragraph (a)(7); rewrote subsection (b); in subsection (c), substituted "The superintendent shall cause the verified and accepted absentee ballots to be opened and tabulated as provided in this Code section. A manager" for "Except as otherwise provided in this Code section, after the close of the polls on the day of the primary, election, or runoff, a manager" at the beginning and deleted ", and prepare an election return for the county or municipality showing the results of the absentee ballots cast in such county or municipality." at the end; and added the second through fourth sentences in subsection (d).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already

voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Provisional absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.03.

Reporting requirements for absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.04.

Acceptance of absentee ballots from military and overseas citizens, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.10.

Mailing and issuance of ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.11.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-286 are included in the annotations for this Code section.

Failure to furnish required information. — Because a candidate for sheriff did not establish substantial error in the votes cast by the electors, the trial court erred by finding, pursuant to O.C.G.A. § 21-2-386, the requisite irregularity or illegality sufficient to change or place in doubt the result of the election; a voter's failure to furnish required information on an absentee ballot envelope is a ground for rejection, but does not mandate automatic rejection, of the ballot. Jones v. Jessup, 279 Ga. 531, 615 S.E.2d 529, 2005 Ga. LEXIS 447 (2005).

Absentee ballots. — District court misapplied Anderson-Burdick framework when the court enjoined the state defendants' enforcement of the long-standing Georgia absentee ballot deadline, which required ballots to be received by 7:00 p.m. on Election Day to be counted, and instead, manufactured the state's own ballot deadline so that the state was required to count any ballot that was both postmarked by and received within three days of Election Day, because Georgia's decades-old absentee ballot deadline was both reasonable and nondiscriminatory, while the state's interests in maintaining that deadline (especially once absentee voting had already begun) were at least "important" and likely compelling. New Ga. Project v. Raffensperger, 976 F.3d 1278, 2020 U.S. App. LEXIS 31405 (11th Cir. 2020).

Voter lacked U.S. Const., Art. III standing to bring a claim under the Elections and Electors Clauses, U.S. Const., Art. I, Sec. IV, Para. I and U.S. Const., Art. II, Sec. I, Para. II, challenging Georgia officials' enforcement of a settlement agreement concerning handling of absentee ballots because the voter's generalized grievance regarding the officials' alleged violations did not confer standing. The same prohibition against generalized grievances applied to the voter's equal protection and due process claims. Wood v. Raffensperger, 501 F. Supp. 3d 1310, 2020 U.S. Dist. LEXIS 218058 (N.D. Ga.), aff'd, 981 F.3d 1307, 2020 U.S. App. LEXIS 37971 (11th Cir. 2020).

OPINIONS OF THE ATTORNEY GENERAL

Duty to keep ballots safe and unopened. — The mandatory language of this section forecloses all discussion of the matter that the board of registrars must keep the envelopes safe and unopened until after the closing of the polls. 1980 Op. Att'y Gen. No. 80-80.

Registrar's duty before certifying ballot. — The registrar must compare each returned absentee ballot with information on file in the registrar's office before certifying the ballot. 1974 Op. Att'y Gen. No. 74-54.

Failure to furnish required information under this section was a ground for rejection. 1974 Op. Att'y Gen. No. 74-54.

Absentee ballots are counted in the ward or district (now precinct), rather than at the county seat. 1948-49 Ga. Op. Att'y Gen. 207.

When voting is complete. — Absentee elector has voted when the elector returns the ballot to the registrar with complete identifying information required by former Code 1933, §§ 34-1404 and 34-1405 (see now O.C.G.A. § 21-2-384) so that the elector's name is placed upon the list of certified absentee electors as required by former Code 1933, § 34-1407 (see now O.C.G.A. § 21-2-386). 1974 Op. Att'y Gen. No. 74-133.

Ineffective attempts at voting by absentee ballot cannot be counted. —

Ballots which are rejected because of insufficient information on the envelope or ballots received after the day of the primary or election cannot be considered as a vote. 1974 Op. Att'y Gen. No. 74-133.

Inspection of returned absentee ballots prior to polls closing not required. — Boards of registrars are not required to make returned absentee ballots subject to inspection prior to the closing of the polls. 1990 Op. Att'y Gen. No. 90-31.

Votes cast for candidate who withdraws after absentee ballots mailed. — Where a candidate whose name is on the ballot withdraws before the election, but after absentee ballots are mailed out, votes on such ballots for the original candidate cannot be counted for another candidate substituted by the candidate's party. 1972 Op. Att'y Gen. No. U72-116.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 340, 341.
C.J.S.
29 C.J.S., Elections, §§ 345 et seq., 356.
ALR.
Challenges to write-in ballots and certification of write-in candidates, 75 A.L.R.6th 311.

21-2-387. Pilot program for electronic handling of absentee ballots; requirements; reporting; termination.

(a) The Secretary of State shall develop and implement a pilot program for the electronic transmission, receipt, and counting of absentee ballots by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, for use in a primary or a general election.

(b) Such pilot program shall provide, at a minimum, for:

(1) The encryption of information and the transmission of such information over a secure network;

(2) The authentication of such information;

(3) The verification of the identity and eligibility of the elector to vote in the primary, election, or runoff, as the case may be;

(4) The protection of the privacy, anonymity, and integrity of the ballots cast;

(5) The prevention of the casting of multiple ballots by the same elector in a primary, election, or runoff;

(6) The prevention of any tampering, abuse, fraudulent use, or illegal manipulation of such system;

(7) The uninterrupted reliability of such system for casting ballots by qualified voters;

(8) The capability of the elector to determine if the electronic transmission of the ballot was successful;

(9) The ability to audit such ballots and to verify that such ballots were properly counted; and

(10) The ability to verify that the information transmitted over the secure network was not viewed or altered by sites that lie between the voting location and the vote counting destination.

(c) The Secretary of State shall develop procedures by which persons who are eligible to utilize the pilot program to vote shall be notified of its availability and the procedures and methods for its utilization.

(d) The provisions of this article shall apply to ballots requested, transmitted, voted, received, and counted under this pilot program as nearly as practicable, but the Secretary of State and the State Election Board shall be authorized to vary such provisions by rule or regulation as necessary to accomplish the goals of this pilot program, provided that such variances shall retain and maintain the same degree of security and integrity of such ballots as provided by this article although in different forms or formats as necessitated by the technology utilized in such pilot program. The Secretary of State and the State Election Board are authorized to promulgate such rules and regulations as necessary to implement the provisions of this Code section and to provide for such variances to this article as needed pursuant to this subsection.

(e) The Secretary of State shall review the results of the pilot program and shall provide the members of the General Assembly with a comprehensive report no later than 90 days following the primary or general election in which such pilot program is used on the effectiveness of such pilot program with any recommendations for its continued use and any needed changes in such program for future primaries and elections.

(f) The pilot program shall be used in the first primary or general election following:

(1) The inclusion in the Appropriations Act of a specific line item appropriation for funding of such pilot program or a determination by the Secretary of State that there is adequate funding through public or private funds, or a combination of public and private funds, to conduct the pilot program; provided, however, that no funds shall be accepted from registered political parties or political bodies for this purpose; and

(2) Certification by the Secretary of State that such pilot program is feasible and can be implemented for such primary or general election.

(g) This Code section shall be repealed by operation of law on July 1 of the year following the conclusion of the pilot program.

History.

Code 1981, § 21-2-387, enacted by Ga. L. 2010, p. 807, § 1; Ga. L. 2011, p. 683, § 14/SB 82.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, "52 U.S.C. Section 20301" was substituted for "42 U.S.C. Section 1973ff" in subsection (a).

Editor's notes.

This Code section formerly pertained to the procedure for ballots of deceased electors. The former Code section was based on Code 1933, § 34-1408, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1 and was repealed by Ga. L. 2005, p. 253, § 55/HB 244, effective July 1, 2005.

Ga. L. 2010, p. 807, § 1/HB 665 provides for the creation by the Secretary of State of a pilot program for electronic transmission of absentee ballots by military and overseas citizens and for the repeal by operation of law on July 1 of the year following the conclusion of the pilot program. As of June 2023, the pilot program has not concluded.

21-2-388. Cancellation of absentee ballots of electors who are present in election precinct during primaries and elections.

When an absentee ballot which has been voted shall be returned to and received by the board of registrars, it shall be deemed to have been voted then and there; and no other ballot shall be issued to the same elector. If an elector has requested to vote by absentee ballot and has not received such absentee ballot, has such ballot in his or her possession, has not yet returned such ballot, or has returned such ballot but the registrars have not received such ballot, such elector may have the absentee ballot canceled and vote in person on the day of the primary, election, or runoff in one of the following ways:

(1) If the elector is in possession of the ballot, by surrendering the absentee ballot to the poll manager of the precinct in which the elector's name appears on the electors list and then being permitted to vote the regular ballot. The poll manager shall mark "Canceled" and the date and time across the face of the absentee ballot and shall initial same. The poll manager shall also make appropriate notations beside the name of the elector on the electors list. All such canceled absentee ballots shall be returned with other ballots to the superintendent; or

(2) If the elector has not received the ballot, has not yet returned the ballot, or if the elector has returned the ballot but the registrars have not received the ballot, by appearing in person before the managers of the elector's precinct, the registrars, or the absentee ballot clerk and requesting in writing that the envelope containing the elector's absentee ballot be marked "Canceled." After having satisfied themselves as to the identity of such elector and confirming that the elector's absentee ballot has not yet been received by the board of registrars, the registrars or the absentee ballot clerk shall grant the request and shall notify the managers of the elector's precinct as to such action so as to permit the elector to vote in person

in that precinct. If the absentee ballot is in the mail, has not yet been returned, or its exact location is unknown, the registrar or the absentee ballot clerk shall write "Canceled" beside the elector's name on the master list of absentee voters and shall cancel the ballot itself as soon as it is received. If the location of the requested absentee ballot is known to the elector and it has not been surrendered to the poll manager, the elector shall destroy the absentee ballot after casting his or her vote in person. Canceled absentee ballots shall be disposed of in the same manner as provided in subsection (a) of Code Section 21-2-386 for absentee ballots returned too late to be cast.

History.
Code 1933, § 34-1409, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1974, p. 71, § 12; Ga. L. 1981, p. 1718, § 9; Ga. L. 1982, p. 1512, § 5; Ga. L. 1994, p. 1406, § 23; Ga. L. 1997, p. 590, § 33; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 544, § 5/SB 194; Ga. L. 2019, p. 7, § 33/HB 316.

Administrative rules and regulations.
Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.06.

Voted absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.09.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 336, 340.

C.J.S.
29 C.J.S., Elections, § 345 et seq.

21-2-389. Payment of postage for mailing absentee ballots.

The postage required for mailing ballots to absentee electors, as provided for in this article, shall be paid by the county or municipality, except in cases where free mail delivery is furnished by the federal government.

History.
Code 1933, § 34-1410, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1987, p. 417, § 6; Ga. L. 1998, p. 295, § 1.

21-2-390. Delivery of election materials to clerk of superior court or city clerk; accounting for ballots; inspection and audit of information contained in absentee ballot applications or envelopes.

(a) All official absentee ballots and envelopes on which the forms of affidavits and jurats appear shall be delivered to the clerk of the superior court or the city clerk upon the conclusion of the primary or election and shall be safely kept by him or her for the period required by law and then shall be destroyed. The applications for such ballots shall be retained by the board of registrars or the municipal absentee ballot clerk for at least 24 months and then may be destroyed. On the

day following the primary or election, the board of registrars or the municipal absentee ballot clerk shall transmit all canceled, spoiled, and rejected absentee ballots and copies of requests for cancellation of absentee ballots to the clerk of the superior court or the city clerk to be held with other election materials as provided in Code Section 21-2-500. The registrars or the municipal absentee ballot clerk shall also transmit an accounting of all absentee ballots, including the number furnished by the registrars or the municipal absentee ballot clerk, the number issued to electors, the number spoiled, and the number rejected.

(b) The Secretary of State shall be authorized to inspect and audit the information contained in the absentee ballot applications or envelopes at his or her discretion at any time during the 24 month retention period. Such audit may be conducted state wide or in selected counties or cities and may include the auditing of a statistically significant sample of the envelopes or a full audit of all of such envelopes. For this purpose, the Secretary of State or his or her authorized agents shall have access to such envelopes in the custody of the clerk of superior court or city clerk.

History.

Ga. L. 1924, p. 186, § 10; Code 1933, § 34-3309; Code 1933, § 34-1411, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1974, p. 71, § 13; Ga. L. 1997, p. 590, § 34; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 13; Ga. L. 2003, p. 517, § 41; Ga. L. 2021, p. 14, § 30/SB 202.

The 2021 amendment, effective March 25, 2021, designated the existing provisions of this Code section as subsection (a) and added subsection (b).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days

will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

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modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

ARTICLE 11

PREPARATION FOR AND CONDUCT OF PRIMARIES AND ELECTIONS

Cross references.

Penalties for offenses relating to access of electors to polling places, or marking of ballots, § 21-2-566 et seq.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, Ch. 34-32 are included in the annotations for this article.

Applicability of state statutes on party primary. — Whenever a political party holds a primary in this state, it is by law an integral part of the election machinery. Once a decision to hold a primary is made, state statutes take hold and direct every essential step from registration and qualification of voters to the placing of the names of the nominees on the general election ballot. King v. Chapman, 62 F. Supp. 639, 1945 U.S. Dist. LEXIS 1841 (D. Ga. 1945), aff'd, 154 F.2d 460, 1946 U.S. App. LEXIS 2069 (5th Cir. 1946) (decided under former Code 1933, Ch. 34-32).

It is still the general law of this state that every such primary election shall be held at the time and place and under the regulations prescribed by the rules of the political party holding the primary, and the return shall be made and the result declared as prescribed by law. Studstill v. Gary, 216 Ga. 268, 116 S.E.2d 213, 1960 Ga. LEXIS 442 (1960) (decided under former Code 1933, Ch. 34-32).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Ga. L. 1960, p. 115, § 1, are included in the annotations for this article.

County primary solely for nominating House candidate legal. — It is legal for a county executive committee to hold a county primary solely for the purpose of nominating a candidate for membership in the House of Representatives, irrespective of the fact that no candidate for county office is to be nominated in the primary. 1962 Ga. Op. Att'y Gen. 214 (decided under Ga. L. 1960, p. 115, § 1).

PART 1

GENERAL PROVISIONS

Cross references.
Penalty for destroying election supplies or conveniences, § 21-2-583.

21-2-400. Duty of superintendent to obtain cards of instruction, blank forms of oaths, and other forms and supplies; preparation and distribution of sample or facsimile ballot labels.

(a) Prior to each primary and election, the superintendent shall obtain from the Secretary of State a sufficient number of cards of instruction for guidance of electors. Such cards of instruction shall include such portions of this chapter as deemed necessary by the Secretary of State and shall be printed for the type of voting equipment or ballots used in the county or municipality. The superintendent shall also obtain from the Secretary of State a sufficient number of blank forms of oaths of poll officers, voter's certificates, voting rights posters, notices of penalties, oaths of assisted electors, numbered list of voters, tally sheets, return sheets, and such other forms and supplies required by this chapter, in each precinct of the county or municipality.

(b) As an aid to electors, sample ballots or ballot labels may be printed and published in any newspaper generally and regularly circulated within the county or municipality, so long as the facsimile is labeled "Sample Ballot" and is at least 25 percent larger or smaller than the official ballot. Reprints of such newspaper printings may be procured and distributed by any elector. Election officials may also prepare and distribute sample ballots or ballot labels or portions thereof, provided they are labeled "Sample Ballot" and are of a different color and at least 25 percent larger or smaller than the official ballot or ballot label.

(c) The superintendent shall prepare sample or facsimile ballots or ballot labels, as the case may be, for each general election which shall contain each question and the candidates who are offering for election for each office which will be voted upon in the county or municipality for distribution upon request to interested electors. Such sample or facsimile ballots or ballot labels shall comply with Code Section 21-2-575.

History.
Orig. Code 1863, § 1237; Code 1868, § 1318; Code 1873, § 1291; Code 1882, § 1291; Ga. L. 1895, p. 23, § 1; Civil Code 1895, § 76; Ga. L. 1900, p. 69, §§ 1, 3; Civil Code 1910, §§ 86, 87; Ga. L. 1922, p. 97, § 7; Code 1933, §§ 34-1401, 34-1402, 34-1908; Code 1933, § 34-1301, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 19; Ga. L. 1977, p. 1198, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 42; Ga.

L. 2005, p. 253, § 56/HB 244; Ga. L. 2011, p. 683, § 15/SB 82.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-194 are included in the annotations for this Code section.

Failure of the superintendent to prepare a sample ballot did not void an election since the irregularity was not sufficient to change or place in doubt the result of the election. Maye v. Pundt, 267 Ga. 243, 477 S.E.2d 119 (decided under former § 21-3-194).

OPINIONS OF THE ATTORNEY GENERAL

All polling places to be opened. — Where a political party holds a primary in a county, the polling place in each and every election district (now precinct) must be opened. 1968 Op. Att'y Gen. No. 68-261.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 228, 245.

C.J.S.
29 C.J.S., Elections, §§ 261, 264, 337, 338.

21-2-401. Delivery of forms and supplies to precincts; distribution of copy of certified electors list; contents of list; authentication; return receipts; master list of county or municipal electors; items to be provided at polling place.

(a) The cards of instruction, return sheets, tally sheets, oaths of poll officers, affidavits, and other forms and supplies required for use in each precinct, and, in precincts in which ballots are used, the official ballots prepared for use therein shall be packed by the superintendent in separate sealed packages for each precinct, marked on the outside so as to designate clearly the precincts for which they are intended and, in the case of precincts in which ballots are used, the number of ballots enclosed. They shall then be delivered by the superintendent, together with the ballot box which shall bear the designation of the precinct, to the managers in the several precincts prior to the hour appointed for opening the polls. In primaries, the parties shall decide whether to use the same ballot box or to use separate ballot boxes. The managers of the respective precincts shall, on delivery to them of such packages, return receipts therefor to the superintendent, who shall keep a record of the time when and the manner in which the several packages are delivered. The superintendent may, in the superintendent's discretion, require the managers of the respective precincts to call at the superintendent's office to obtain such packages.

(b) The registrars shall, prior to the hour appointed for opening the polls, place in the possession of the managers in each precinct one copy of the certified electors list for such precinct, such list to contain all the information required by law. The list shall indicate the name of any elector who has been mailed or delivered an absentee ballot. The list for a given precinct may be divided into as many alphabetical sections as is deemed necessary. Such list of electors shall be authenticated by the signatures of at least two of the registrars. In a municipal primary, where the parties do not agree to have only one set of managers for a precinct, the electors list shall be delivered to the chief manager of the political party which polled the highest number of votes in the precinct in the immediately preceding election of the presiding officer of the governing authority. In addition, the registrars shall at the same time place in the possession of the managers in each precinct one copy of the list of inactive electors for such precinct. The managers of the respective precincts shall, on delivery to them of such electors lists, return receipts therefor to the registrars, who shall keep a record of the time when and the manner in which the electors lists are delivered. The registrars may, in their discretion, require the managers of the respective precincts to call at their office to obtain such lists.

(c) The registrars may, in their discretion, place a master list containing the names and proper voting precincts of all electors and all inactive electors of the county or municipality at some or all of the polling places located in the county or municipality on the day of each election for use by the poll workers to assist electors in locating their proper precinct.

(d) The superintendent shall provide at the polling place copies of the sample or facsimile ballots for such primary or election as well as a list of the certified write-in candidates for such election in the form as provided by the Secretary of State or appropriate municipal official pursuant to Code Section 21-2-133.

History.

Ga. L. 1894, p. 115, § 9; Civil Code 1895, § 59; Civil Code 1910, § 67; Ga. L. 1922, p. 97, § 5; Code 1933, §§ 34-701, 34-1906; Ga. L. 1946, p. 75, §§ 2, 3; Ga. L. 1949, p. 1204, § 38; Ga. L. 1958, p. 269, § 32; Code 1933, § 34-1303, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, §§ 1, 2; Ga. L. 1970, p. 347, § 22; Ga. L. 1982, p. 1512, § 5; Ga. L. 1987, p. 417, § 7; Ga. L. 1994, p. 1443, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 16/SB 82.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 307.

C.J.S.

29 C.J.S., Elections, §§ 75, 326, 328.

21-2-402. Voter's certificates; preparation, forms, and procedures.

(a) At each primary and election, the Secretary of State shall prepare and furnish to each superintendent a suitable number of voter's certificates which shall be in substantially the following form:

VOTER'S CERTIFICATE

I hereby certify that I am qualified to vote at the (primary or election) held on _____, that I have not and will not vote elsewhere in this (primary or election) in my own name or in any other name, and that I am a citizen of the United States and am not currently serving a sentence for a felony conviction. I understand that making a false statement on this certificate is a felony under Code Section 21-2-562.

Signature _____

Current residence address of elector:

_____

Elector's date of birth: _____

Name or initials of poll officer receiving voter's certificate: _____

In case of physical disability or illiteracy, fill out the following:

Reason for assistance (Check appropriate square):

( ) Elector is unable to read the English language.

( ) Elector requires assistance due to physical disability.

_____

Signature of poll officer

Number of stub of ballot or number of admission to voting machine: _

(b) The voter's certificates shall be so prepared as to be capable of being inserted by the poll officers in a suitable binder for each primary or election. The binder shall have written thereon the words "Voter's Certificates" and shall have a space for filling in the designation of the precinct and the date of the primary or election.

(c) The election superintendent may obtain or may create and provide other voter's certificates, provided that such other voter's

certificates are in the form required under this Code section and are approved by the Secretary of State.

History.
Code 1933, § 34-1302, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, §§ 20, 21; Ga. L. 1977, p. 313, § 1; Ga. L. 1978, p. 1004, § 23; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1987, p. 1360, § 16; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 1406, § 24; Ga. L. 1996, p. 145, § 17; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 35; Ga. L. 2006, p. 888, § 5/HB 1435.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 65, 70, 73.

21-2-403. Time for opening and closing of polls; extended poll hours.

(a) At all primaries and elections the polls shall be opened at 7:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, and shall remain open continuously until 7:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, at which time they shall be closed; provided, however, that, in all cities having a population of 300,000 or more according to the United States decennial census of 1970 or any future such census, the polls shall remain open continuously until 8:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, during the cities' general elections, at which time they shall be closed and provided, further, that, in a special election held to fill a vacancy in an office in which the district represented by such office lies wholly within the boundaries of a city, the polls shall close at the same time as for a municipal general election in such city.

(b) Poll hours at a precinct may be extended only by order of a judge of the superior court of the county in which the precinct is located upon good cause shown by clear and convincing evidence that persons were unable to vote at that precinct during a specific period or periods of time. Poll hours shall not be extended longer than the total amount of time during which persons were unable to vote at such precinct. Any order extending poll hours at a precinct beyond 9:00 P.M. shall be by written order with specific findings of fact supporting such extension.

History.
Ga. L. 1865-66, p. 24, § 1; Code 1868, § 1313; Code 1873, § 1286; Code 1882, § 1286; Civil Code 1895, § 70; Ga. L. 1898, p. 93, § 1; Civil Code 1910, § 80; Code 1933, § 34-1302; Ga. L. 1941, p. 321, § 1; Ga. L. 1943, p. 480, § 1; Code 1933, § 34-1304, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, Ex. Sess., p. 311, § 1; Ga. L. 2021, p. 14, § 31/SB 202.

The 2021 amendment, effective March 25, 2021, designated the existing provisions of this Code section as subsec-

tion (a) and added subsection (b).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly

considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Absentee ballots. — District court misapplied Anderson-Burdick framework when the court enjoined the state defendants' enforcement of the long-standing Georgia absentee ballot deadline, which required ballots to be received by 7:00 p.m. on Election Day to be counted, and instead, manufactured the state's own ballot deadline so that the state was required to count any ballot that was both postmarked by and received within three days of Election Day, because Georgia's decades-old absentee ballot deadline was both reasonable and nondiscriminatory, while the state's interests in maintaining that deadline (especially once absentee voting had already begun) were at least "important" and likely compelling. New Ga. Project v. Raffensperger, 976 F.3d 1278, 2020 U.S. App. LEXIS 31405 (11th Cir. 2020).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 289, 290, 291, 301, 304 et seq.
C.J.S.
29 C.J.S., Elections, § 330.
ALR.
Violation of law as regards time for keeping polls open as affecting election results, 66 A.L.R. 1159.
Validity of public election as affected by fact that it was held at time other than that fixed by law, 121 A.L.R. 987.

21-2-404. Affording employees time off to vote.

Each employee in this state shall, upon reasonable notice to his or her employer, be permitted by his or her employer to take any necessary time off from his or her employment to vote in any municipal, county, state, or federal political party primary or election for which such employee is qualified and registered to vote either on one of the days that are designated for advance in-person voting or on the day on which such primary or election is held; provided, however, that such necessary time off shall not exceed two hours. The employer may specify the hours during which the employee may absent himself or herself as provided in this Code section.

History.
Ga. L. 1964, p. 253, § 1; Ga. L. 1985, p. 206, § 1; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2023, p. 614, § 3/SB 129, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, in the first sentence, inserted "either on one of the days that are designated for advance in-person voting or" following "registered to vote" and deleted "; and provided, further, that, if the hours of work of such employee commence at least two hours after the opening of the polls or end at least two hours prior to the closing of the polls, then the time off for voting as provided for in this Code section shall not be available".

Cross references.
Allowing of excused absences to students to enable them to register or vote, § 20-2-310.

RESEARCH REFERENCES

C.J.S.
51 C.J.S., Labor Relations, § 18.
ALR.
Constitutionality of statute relating to absence of employee in private employment, 28 A.L.R. 616.

21-2-405. Poll officers; arrival at precinct; failure to appear; custodians of voting materials.

(a) The chief manager and two assistant managers shall meet in the respective places appointed for holding the primary or election in each precinct at least one hour before the hour for opening the polls on the day of each primary or election. The other required poll officers shall meet in the respective places appointed for holding the primary or election in each precinct at least 30 minutes before the hour for opening

the polls on the day of each primary or election. Before entering upon their duties at any primary or election, all poll officers shall take and subscribe in duplicate to the oaths required by this chapter.

(b) If any chief manager shall not appear at the polling place by 7:00 A.M. on the day of any primary or election, the assistant managers shall appoint a chief manager who is qualified under this chapter. If any assistant manager shall not appear at such hour, the chief manager shall appoint an assistant manager who is qualified under this chapter. If, for any reason, any vacancy in the office of manager shall not have been filled by 7:30 A.M., the electors of the precinct, present at such time, shall elect a qualified person to fill such vacancy. If any clerk shall not appear by 7:00 A.M., the chief manager shall fill such vacancy by appointing a qualified person therefor. Any person thus appointed or elected to fill a vacancy shall take and subscribe in duplicate to the appropriate oath required by this chapter.

(c) After the poll officers of a precinct have been organized, the chief manager shall designate one of the assistant managers to have custody of the electors list. In precincts in which ballots are used, the other assistant manager shall have charge of the receipt and deposit of ballots in the ballot box, the chief manager or one of the clerks shall issue the ballots to electors after they are found entitled to vote, and the other clerk shall have custody of the voter's certificate binder and shall place the voter's certificates therein as they are received and approved. In precincts in which voting machines are used, the other assistant manager or clerk shall have custody of the voter's certificate binder and shall place the voter's certificates therein as they are received and approved, and the chief manager shall have special charge of the operation of the voting machine; provided, however, that the chief manager may make other arrangements for the division of the duties imposed by this chapter, so long as each poll officer is assigned some specific duty to perform. In municipal primaries being held with separate precinct managers, the chief managers appointed by each party shall jointly appoint the person or persons to be in charge of the electors list. In all precincts, the chief manager shall assign an assistant manager or a clerk to keep a numbered list of voters, in sufficient counterparts, during the progress of the voting.

(d) Any poll officer may be assigned by the chief manager to assist another officer in the performance of his or her duties or to perform them for him during his or her temporary absence or disability.

(e) Nothing in this Code section shall prohibit a county or municipality from offering poll officers, other than the chief manager and assistant managers, the option of working part of an election day, rather than the entire day from the opening of the polls to the closing of the polls and completion of the required duties following the closing

of the polls. In such cases, any poll officer who begins a shift of work after the opening of the polls shall take and subscribe the same oath as required of poll officers in subsection (a) of this Code section and shall handle such duties as assigned by the chief manager.

History.
Orig. Code 1863, §§ 1228, 1233; Code 1868, §§ 1309, 1314; Code 1873, §§ 1282, 1287; Ga. L. 1880-81, p. 151, § 1; Code 1882, §§ 1282, 1287; Civil Code 1895, §§ 66, 71; Civil Code 1910, §§ 76, 81; Code 1933, § 34-1201; Code 1933, § 34-1308, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, § 5; Ga. L. 1970, p. 347, § 23; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 43.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 308.

C.J.S.
29 C.J.S., Elections, §§ 324, 330.

21-2-406. Public performance of duties by officials.

Superintendents, poll officers, and other officials engaged in the conducting of primaries and elections held under this chapter shall perform their duties in public.

History.
Ga. L. 1894, p. 115, § 16; Civil Code 1895, § 65; Civil Code 1910, § 75; Code 1933, § 34-1102; Code 1933, § 34-1309, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, § 6; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Inspection of returned absentee ballots prior to polls closing not required. — Boards of registrars are not required to make returned absentee ballots subject to inspection prior to the closing of polls. 1990 Op. Att'y Gen. No. 90-31.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 90 et seq.

C.J.S.
29 C.J.S., Elections, § 324.

21-2-407. Duty of registrars to review qualifications of electors who may have been erroneously omitted from list of electors; authority to place such electors on the list.

The registrars shall meet at their main office during each primary or election for the purpose of considering the qualification of electors whose names may have been omitted by inadvertence or mistake from the list of electors. The registrars shall be authorized to place the names of such electors on the registration list or make other corrections to the list as necessary.

History.
Ga. L. 1943, p. 353, § 3; Ga. L. 1949, p. 1204, § 52; Ga. L. 1958, p. 269, § 42; Code 1933, § 34-1305, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 36.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 179.

C.J.S.
29 C.J.S., Elections, § 76 et seq.

21-2-408. Poll watchers; designation; duties; removal for interference with election; reports of infractions or irregularities; ineligibility of candidates to serve; training.

(a)(1) In a primary or run-off primary, each candidate entitled to have his or her name placed on the primary or run-off primary ballot may submit the name of one poll watcher for each precinct in which he or she wishes to have an observer to the chairperson or secretary of the appropriate party executive committee at least 21 days prior to such primary or 14 days prior to such run-off primary. The appropriate party executive committee shall designate at least seven days prior to such primary or run-off primary no more than two poll watchers for each precinct, such poll watchers to be selected by the committee from the list submitted by party candidates. Official poll watchers shall be given a letter signed by the party chairperson and secretary, if designated by a political party, containing the following information: name of official poll watcher, address, precinct in which he or she shall serve, and name and date of primary or run-off primary. At least three days prior to the primary, a copy of the letter shall be delivered to the superintendent of the county or municipality in which the poll watcher is to serve.

(2) In a primary or run-off primary, each candidate entitled to have his or her name placed on the primary or run-off primary ballot may submit the name of one poll watcher for each location at which advance voting is conducted pursuant to subsection (b) of Code Section 21-2-380 in which he or she wishes to have an observer to the chairperson or secretary of the appropriate party executive committee at least 21 days prior to the beginning of the advance voting period for a primary or 14 days prior to such period in a run-off primary. The appropriate party executive committee shall designate at least seven days prior to such advance voting period for a primary or run-off primary no more than two poll watchers for each advance voting location, such poll watchers to be selected by the committee from the list submitted by party candidates. Official poll watchers shall be given a letter signed by the party chairperson and secretary, if designated by a political party, containing the following information: name of official poll watcher, address, precinct in which he or she shall serve, and name and date of primary or run-off primary. At least

three days prior to the beginning of the advance voting period, a copy of the letter shall be delivered to the superintendent and the chief registrar of the county or municipality in which the poll watcher is to serve.

(b)(1) In an election or run-off election, each political party and political body shall each be entitled to designate, at least seven days prior to such election or run-off election, no more than two official poll watchers in each precinct to be selected by the appropriate party or body executive committee. Each independent candidate shall be entitled to designate one poll watcher in each precinct. In addition, candidates running in a nonpartisan election shall be entitled to designate one poll watcher in each precinct. Each poll watcher shall be given a letter signed by the appropriate political party or body chairperson and secretary, if a party or body designates same, or by the independent or nonpartisan candidate, if named by the independent or nonpartisan candidate. Such letter shall contain the following information: name of official poll watcher, address, precinct in which he or she shall serve, and date of election or run-off election. At least three days prior to the election, a copy of the letter shall be delivered to the superintendent of the county or municipality in which the poll watcher is to serve.

(2) In an election or run-off election, each political party and political body, which body is registered pursuant to Code Section 21-2-110 and has nominated a candidate for state-wide office, shall additionally be entitled to designate, at least 14 days prior to such election or run-off election, no more than 25 official state-wide poll watchers to be selected by the appropriate party or body executive committee. Each independent candidate shall also be entitled to designate no more than 25 official state-wide poll watchers. In addition, candidates running in a state-wide nonpartisan election shall be entitled to designate no more than 25 official state-wide poll watchers. All such designations of state-wide poll watchers shall be in writing and made and submitted to the State Election Board. A state-wide poll watcher shall have the same powers and duties as poll watchers and shall be entitled to watch the polls in any precinct in the state but shall otherwise be subject to all limitations and prohibitions placed on poll watchers; provided, however, that no more than two state-wide poll watchers of a political party or body, of an independent candidate, or of a nonpartisan candidate shall be in the same polling place simultaneously. Each state-wide poll watcher shall be given a letter signed by the chairperson of the State Election Board. Such letter shall contain the following information: name of official state-wide poll watcher, address, a statement that such poll watcher is a state-wide poll watcher, and date of election or run-off election. At least three days prior to the election, a copy of the letter

shall be delivered to the superintendent of each county in which the poll watcher might serve.

(3)(A) In an election or run-off election, each political party and political body shall each be entitled to designate, at least seven days prior to the beginning of the advance voting period for such election or run-off election, no more than two official poll watchers for each location at which advance voting is conducted pursuant to subsection (b) of Code Section 21-2-380 to be selected by the appropriate party or body executive committee. Each independent candidate shall be entitled to designate one poll watcher for each location at which advance voting is conducted pursuant to subsection (b) of Code Section 21-2-380. In addition, candidates running in a nonpartisan election shall be entitled to designate one poll watcher for each location at which advance voting is conducted pursuant to subsection (b) of Code Section 21-2-380. Each poll watcher shall be given a letter signed by the appropriate political party or body chairperson and secretary, if a party or body designates same, or by the independent or nonpartisan candidate, if named by the independent or nonpartisan candidate. Such letter shall contain the following information: name of official poll watcher, address, precinct in which he or she shall serve, and date of election or run-off election. At least three days prior to the beginning of the advance voting period for such election, a copy of the letter shall be delivered to the superintendent and the chief registrar of the county or municipality in which the poll watcher is to serve.

(B) In an election or run-off election, each political party and political body, which body is registered pursuant to Code Section 21-2-110 and has nominated a candidate for state-wide office, shall additionally be entitled to designate, at least 14 days prior to the beginning of the advance voting period for such election or run-off election, no more than 25 official state-wide poll watchers for such advance voting period to be selected by the appropriate party or body executive committee. Each independent candidate shall also be entitled to designate no more than 25 official state-wide poll watchers for such advance voting period. In addition, candidates running in a state-wide nonpartisan election shall be entitled to designate no more than 25 official state-wide poll watchers for such advance voting period. All such designations of state-wide poll watchers shall be in writing and made and submitted to the State Election Board. A state-wide poll watcher shall have the same powers and duties as poll watchers and shall be entitled to watch any advance voting location in the state but shall otherwise be subject to all limitations and prohibitions placed on poll watchers; provided, however, that no more than

two state-wide poll watchers of a political party or body, of an independent candidate, or of a nonpartisan candidate shall be in an advance voting location simultaneously. Each state-wide poll watcher shall be given a letter signed by the chairperson of the State Election Board. Such letter shall contain the following information: name of official state-wide poll watcher, address, a statement that such poll watcher is a state-wide poll watcher for advance voting, and date of election or run-off election. At least three days prior to the beginning of the advance voting period for such election, a copy of the letter shall be delivered to the superintendent and chief registrar of each county in which the poll watcher might serve.

(c) In counties or municipalities using direct recording electronic (DRE) voting systems or optical scanning voting systems, each political party may appoint two poll watchers in each primary or election, each political body may appoint two poll watchers in each election, each nonpartisan candidate may appoint one poll watcher in each nonpartisan election, and each independent candidate may appoint one poll watcher in each election to serve in the locations designated by the superintendent within the tabulating center. Such designated locations shall include the check-in area, the computer room, the duplication area, and such other areas as the superintendent may deem necessary to the assurance of fair and honest procedures in the tabulating center. The locations designated by the superintendent shall ensure that each poll watcher can fairly observe the procedures set forth in this Code section. The poll watchers provided for in this subsection shall be appointed and serve in the same manner as other poll watchers.

(d) Notwithstanding any other provisions of this chapter, a poll watcher may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes. Such poll watcher shall in no way interfere with the conduct of the election, and the poll manager may make reasonable regulations to avoid such interference. Without in any way limiting the authority of poll managers, poll watchers are prohibited from talking to voters, checking electors lists, using photographic or other electronic monitoring or recording devices, using cellular telephones, or participating in any form of campaigning while they are behind the enclosed space. If a poll watcher persists in interfering with the conduct of the election or in violating any of the provisions of this Code section after being duly warned by the poll manager or superintendent, he or she may be removed by such official. Any infraction or irregularities observed by poll watchers shall be reported directly to the superintendent, not to the poll manager. The superintendent shall furnish a badge to each poll watcher bearing the words “Official Poll Watcher,” the name of the poll watcher, the primary or election in which the poll watcher shall serve,

and either the precinct or tabulating center in which the poll watcher shall serve or a statement that such poll watcher is a state-wide poll watcher. The poll watcher shall wear such badge at all times while serving as a poll watcher.

(e) No person shall be appointed or be eligible to serve as a poll watcher in any primary or election in which such person is a candidate. No person shall be eligible to serve as a poll watcher unless he or she has completed training provided by the political party, political body, or candidate designating the poll watcher. Upon request, the Secretary of State shall make available material to each political party, political body, or candidate that can be utilized in such training but it shall be the responsibility of the political party, political body, or candidate designating the poll watcher to instruct poll watchers in their duties and in applicable laws and rules and regulations. Each political party, political body, or candidate shall, in their written designation of poll watchers, certify under oath that the named poll watchers have completed the training required by this Code section.

History.

Code 1933, § 34-1310, enacted by Ga. L. 1969, p. 308, § 8; Ga. L. 1977, p. 1053, § 8; Ga. L. 1978, p. 1004, § 35; Ga. L. 1979, p. 955, § 6; Ga. L. 1981, p. 1718, § 5; Ga. L. 1982, p. 1512, § 5; Ga. L. 1995, p. 1027, § 10; Ga. L. 1997, p. 590, § 35; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 17, 40; Ga. L. 1999, p. 52, § 14; Ga. L. 2001, p. 240, § 37; Ga. L. 2001, p. 269, § 22; Ga. L. 2003, p. 517, § 44; Ga. L. 2005, p. 253, § 57/HB 244; Ga. L. 2021, p. 14, § 32/SB 202.

The 2021 amendment, effective March 25, 2021, added the third sentence in subsection (c) and added the last three sentences in subsection (e).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days

will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant

modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Poll watchers, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Subject 183-1-13.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

County school board referendum is a "primary" or an "election," so that members of the public are barred from campaigning, or checking voters' lists within 250 feet of the polls. Stiles v. Earnest, 252 Ga. 260, 312 S.E.2d 337, 1984 Ga. LEXIS 661 (1984).

Invalidation of election results not warranted. — Evidence that the winning candidate's poll watcher improperly viewed the official list of persons who voted did not place the result of the election in doubt, and thus, did not warrant invalidating the election results. Hunt v. Crawford, 270 Ga. 7, 507 S.E.2d 723.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-1209 are included in the annotations for this Code section.

Former Code 1933, § 34-1310 (see now O.C.G.A. § 21-2-408) was not in conflict with former Code 1933, § 34-1008 (see now O.C.G.A. § 21-2-152), since that section provided for primaries to be conducted like general elections "insofar as practicable," thus allowing for those instances where the general election and primary procedures must differ. 1970 Op. Att'y Gen. No. U70-100.

Scope of area and activity open to campaign worker during election. — Except where there are no attempts at electioneering, it is legal for a candidate or a candidate's campaign worker to be present in the polling place, but outside the enclosed area during an election or to be present outside the polling place, but within the 250-foot limit, but it is illegal to engage in noncommunicative but otherwise campaign related activity, specifically, observing voters and checking a voters list, outside the polling place but within the 250-foot limit. 1982 Op. Att'y Gen. No. 82-30.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 308.

C.J.S.

29 C.J.S., Elections, §§ 332, 333.

21-2-409. Assisting electors who cannot read English or who have disabilities.

(a) No elector shall receive any assistance in voting at any primary or

election unless he or she is unable to read the English language or he or she has a disability which renders him or her unable to see or mark the ballot or operate the voting equipment or to enter the voting compartment or booth without assistance. A person assisting an elector shall identify himself or herself to a poll worker who shall record such information on the disabled elector's voter certificate showing that such person provided assistance in voting to such elector.

(b) Any elector who is entitled to receive assistance in voting under this Code section shall be permitted by the managers to select any person of the elector's choice except such elector's employer or agent of that employer or officer or agent of such elector's union to enter the voting compartment or booth with him or her to assist in voting, such assistance to be rendered inside the voting compartment or booth. No person whose name appears on the ballot as a candidate at a particular election nor the mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of that candidate shall offer assistance during that particular election under the provisions of this Code section to any voter who is not related to such candidate. For the purposes of this subsection, "related to such candidate" shall mean the candidate's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law. Notice of the availability of such assistance shall be prominently posted at each polling place.

History.

Ga. L. 1922, p. 97, § 4; Code 1933, § 34-1905; Code 1933, § 34-1317, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1966, p. 185, § 1; Ga. L. 1968, p. 871, § 13; Ga. L. 1969, p. 285, § 4; Code 1933, § 34-1312, as redesignated by Ga. L. 1969, p. 308, § 18; Ga. L. 1981, p. 1718, § 6; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1989, p. 911, § 1; Ga. L. 1990, p. 53, § 1; Ga. L. 1996, p. 145, § 18; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 38; Ga. L. 2003, p. 517, § 45; Ga. L. 2004, p. 103, § 1; Ga. L. 2006, p. 888, § 6/HB 1435; Ga. L. 2008, p. 781, § 11/HB 1112; Ga. L. 2019, p. 7, § 34/HB 316.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, "subsection" was substituted for "paragraph" near the beginning of the third sentence of subsection (b).

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Failure to give required oaths to voters receiving assistance along with other irregularities were sufficient to cast doubt on the results of an election. Mc-

Cranie v. Mullis, 267 Ga. 416, 478 S.E.2d 377.

Investigation into whether voter activist was a convicted felon did not support civil claim. — Evidence that an elections official and a sheriff discussed and questioned a political activist about rumors that the activist was a convicted felon did not support a Fourteenth Amendment claim for purposes of 42 U.S.C. § 1983 or 42 U.S.C. § 1985(3) since the activist failed to provide evidence of malicious intent or conduct that shocked the conscience, the activist failed to establish a constitutional violation, a necessary element of a claim under 42 U.S.C. § 1983 or 42 U.S.C. § 1985(3). Moore v. Nelson, 394 F. Supp. 2d 1365, 2005 U.S. Dist. LEXIS 15563 (M.D. Ga. 2005).

Invalidation of election reversed on appeal. — Trial court erred by invalidating an election for sheriff and ordering a new election because the evidence of systemic misconduct for vote buying and alleged wrongful distribution of absentee ballots was speculative and insufficient to support the trial court's conclusion that irregularities cause doubt on the results. Meade v. Williamson, 293 Ga. 142, 745 S.E.2d 279, 2013 Ga. LEXIS 502 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-1903 are included in the annotations for this Code section.

Restrictions unenforceable in presidential preference primary. — The restrictions contained in O.C.G.A. § 21-2-409, limiting the class of persons permitted to assist disabled or illiterate electors at the polls, and the restrictions contained in O.C.G.A. § 21-2-385, limiting the class of persons permitted to assist disabled or illiterate electors voting by absentee ballot, cannot be enforced in the presidential preference primary nor can the limitations contained in these Code sections concerning the number of persons one individual may assist be enforced. 1984 Op. Att'y Gen. No. 84-15.

No poll officer may provide voting assistance to an elector. 1965-66 Op. Att'y Gen. No. 66-182.

Voter's determination as to need of assistance. — Whether a particular person would qualify under former Code 1933, § 34-1903 (see now O.C.G.A. § 21-2-586) was a question which addressed itself to the voter, inasmuch as the voter must state under oath that the voter needs assistance. 1958-59 Ga. Op. Att'y Gen. 148 (decided under former Code 1933, § 34-1903).

Voter may be administered the oath by any of the managers or by a notary public or other officer qualified to administer oaths. 1948-49 Ga. Op. Att'y Gen. 204.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 313 et seq.

C.J.S.
29 C.J.S., Elections, §§ 334, 342, 343.

21-2-409.1. Voting by electors who are 75 years of age or older or disabled electors without having to wait in line.

On election day between the hours of 9:30 A.M. and 4:30 P.M., each elector who is 75 years of age or older or who is disabled and requires assistance in voting as authorized by Code Section 21-2-409, shall, upon request to a poll officer, be authorized at any primary or election to vote immediately at the next available voting compartment or booth without

having to wait in line. Notice of the provisions of this Code section shall be prominently displayed in the voting place.

History.
Code 1981, § 21-2-409.1, enacted by Ga. L. 1989, p. 1084, § 2; Ga. L. 1995, p. 1302, § 14; Ga. L. 1998, p. 295, § 1.

21-2-410. Poll officers authorized to give instructions to electors upon request.

If any elector, before or after entering the voting booth, shall ask for instructions concerning the manner of voting, a poll officer may give such elector such instructions; but no person giving an elector such instructions shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket or for any particular candidate or for or against any particular question. After giving such instructions and before the elector closes the booth or votes, the poll officer shall retire and the elector shall immediately vote.

History.
Code 1933, § 34-1311, enacted by Ga. L. 1969, p. 308, § 10; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 313 et seq.

C.J.S.
29 C.J.S., Elections, §§ 334, 335, 336.

21-2-411. Return of checked list of electors and voter's certificates to superintendent; disposition of list and certificates by registrars.

The chief manager in each precinct shall return a checked list of electors, reflecting those who voted, and the voter's certificates to the superintendent, to be deposited with the registrars. The board of registrars shall keep such voter's certificates for at least 24 months and such electors lists for at least five years.

History.
Ga. L. 1894, p. 115, § 10; Civil Code 1895, § 62; Civil Code 1910, § 72; Code 1933, § 34-901; Code 1933, § 34-1330, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1314.1, as redesignated by Ga. L. 1969, p. 308, § 34; Ga. L. 1978, p. 1004, § 26; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 15; Ga. L. 2001, p. 240, § 39; Ga. L. 2012, p. 995, § 29/SB 92.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 75.

21-2-412. Duties of superior courts on days of primaries and elections.

At least one judge of the superior court of each judicial circuit shall be available in his or her circuit on the day of each primary or election from 7:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, until 10:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, and so long thereafter as it may appear that the process of such court will be necessary to secure a free, fair, and correct computation and canvass of votes cast at such primary or election. During such period the court shall issue process, if necessary, to enforce and secure compliance with the primary or election laws and shall decide such other matters pertaining to the primary or election as may be necessary to carry out the intent of this chapter.

History. Code 1933, § 34-1306, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 365 et seq.

21-2-413. Conduct of voters, campaigners, and others at polling places generally.

(a) No elector shall be allowed to occupy a voting compartment or voting machine booth already occupied by another except when giving assistance as permitted by this chapter.

(b) No elector shall remain in a voting compartment or voting machine booth an unreasonable length of time; and, if such elector shall refuse to leave after such period, he or she shall be removed by the poll officers.

(c) No elector except a poll officer or poll watcher shall reenter the enclosed space after he or she has once left it except to give assistance as provided by this chapter.

(d) No person, when within the polling place, shall electioneer or solicit votes for any political party or body or candidate or question, nor shall any written or printed matter be posted within the room, except as required by this chapter. The prohibitions contained within Code Section 21-2-414 shall be equally applicable within the polling place and no elector shall violate the provisions of Code Section 21-2-414.

(e) No person shall use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones while such person is in a polling place while voting is taking place; provided, however, that a poll manager, in his or her discretion, may allow the use of photo-

graphic devices in the polling place under such conditions and limitations as the election superintendent finds appropriate, and provided, further, that no photography shall be allowed of a ballot or the face of a voting machine or DRE unit or electronic ballot marker while an elector is voting such ballot or machine or DRE unit or using such electronic ballot marker, and no photography shall be allowed of an electors list, electronic electors list, or the use of an electors list or electronic electors list. This subsection shall not prohibit the use of photographic or other electronic monitoring or recording devices, cameras, or cellular telephones by poll officials for official purposes.

(f) All persons except poll officers, poll watchers, persons in the course of voting and such persons' children under 18 years of age or any child who is 12 years of age or younger accompanying such persons, persons lawfully giving assistance to electors, duly authorized investigators of the State Election Board, and peace officers when necessary for the preservation of order, must remain outside the enclosed space during the progress of the voting. Notwithstanding any other provision of this chapter, any elector shall be permitted to be accompanied into the enclosed area and into a voting compartment or voting machine booth while voting by such elector's child or children under 18 years of age or any child who is 12 years of age or younger unless the poll manager or an assistant manager determines in his or her sole discretion that such child or children are causing a disturbance or are interfering with the conduct of voting. Children accompanying an elector in the enclosed space pursuant to this subsection shall not in any manner handle any ballot nor operate any function of the voting equipment under any circumstances.

(g) When the hour for closing the polls shall arrive, all electors who have already qualified and are inside the enclosed space shall be permitted to vote; and, in addition thereto, all electors who are then in the polling place outside the enclosed space, or then in line outside the polling place, waiting to vote, shall be permitted to do so if found qualified, but no other persons shall be permitted to vote.

(h) It shall be the duty of the chief manager to secure the observances of this Code section, to keep order in the polling place, and to see that no more persons are admitted within the enclosed space than are permitted by this chapter. Further, from the time a polling place is opened until the ballots are delivered to the superintendent, the ballots shall be in the custody of at least two poll officers at all times.

(i) No person except peace officers regularly employed by the federal, state, county, or municipal government or certified security guards shall be permitted to carry firearms within 150 feet of any polling place as provided for in subsection (b) of Code Section 16-11-127.

History.

Code 1933, § 34-1319, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1313, as redesignated by Ga. L. 1969, p. 308, § 20; Ga. L. 1975, p. 807, § 1; Ga. L. 1978, p. 1004, § 25; Ga. L. 1978, p. 1039, § 3; Ga. L. 1985, p. 496, § 15; Ga. L. 1986, p. 32, § 1; Ga. L. 1992, p. 1815, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 40; Ga. L. 2003, p. 517, § 46; Ga. L. 2012, p. 995, § 30/SB 92; Ga. L. 2015, p. 805, § 12/HB 492; Ga. L. 2019, p. 7, § 35/HB 316.

Cross references.

Further provisions regarding prohibited activities in vicinity of voting compartment or voting booth, § 21-2-568.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-1212 and former Code Section 21-3-320 are included in the annotations for this Code section.

Scope of area and activity open to campaign worker during election. — Except where there are no attempts at electioneering, it is legal for a candidate or a candidate's campaign worker to be present in a polling place, but outside an enclosed area during election or to be present outside a polling place, but within a 250-foot limit, but it is illegal to engage in noncommunicative but otherwise campaign related activity, specifically, observing voters and checking a voters list, outside a polling place but within the 250-foot limit. 1982 Op. Att'y Gen. No. 82-30 (decided prior to 1989 amendment to § 21-2-414(b) and under former Code 1933, § 34A-1212).

RESEARCH REFERENCES

Am. Jur. 2d.

25 Am. Jur. 2d, Elections, § 90 et seq. 26 Am. Jur. 2d, Elections, §§ 304 et seq., 311, 354, 451, 452.

C.J.S.

29 C.J.S., Elections, §§ 324, 330 et seq.

21-2-414. Restrictions on campaign activities, giving of food or water, and public opinion polling within the vicinity of a polling place; cellular phone use prohibited; prohibition of candidates from entering certain polling places.

(a) No person shall solicit votes in any manner or by any means or method, nor shall any person distribute or display any campaign material, nor shall any person give, offer to give, or participate in the giving of any money or gifts, including, but not limited to, food and drink, to an elector, nor shall any person solicit signatures for any petition, nor shall any person, other than election officials discharging their duties, establish or set up any tables or booths on any day in which ballots are being cast:

(1) Within 150 feet of the outer edge of any building within which a polling place is established;

(2) Within any polling place; or

(3) Within 25 feet of any voter standing in line to vote at any polling place.

These restrictions shall not apply to conduct occurring in private offices or areas which cannot be seen or heard by such electors.

(b) Rooms under the control or supervision of the board of registrars or absentee ballot clerk in which absentee ballots are being cast shall be considered polling places.

(c)(1) No person shall conduct any exit poll or public opinion poll with voters within 25 feet of the exit of any building in which a polling place is established on any day in which ballots are being cast.

(2) Except for credentialed poll watchers, poll workers, and law enforcement officers, poll managers may manage the number of persons allowed in the polling place to prevent confusion, congestion, and inconvenience to voters.

(d) No person whose name appears as a candidate on the ballot being voted upon at a primary, election, special primary, or special election, except a judge of the probate court serving as the election superintendent, shall physically enter any polling place other than the polling place at which that person is authorized to cast his or her ballot for that primary, election, special primary, or special election and, after casting his or her ballot, the candidate shall not return to such polling place until after the poll has closed and voting has ceased or other than to transact business with the board of registrars, so long as the person does not violate any other provision of this Code section. Judges of the probate court serving as election superintendents shall enter polling places only as necessary to fulfill their duties as election superintendents and shall not engage in any practice prohibited by this Code section.

(e) This Code section shall not be construed to prohibit a poll officer from distributing materials, as required by law, which are necessary for the purpose of instructing electors or from distributing materials prepared by the Secretary of State which are designed solely for the purpose of encouraging voter participation in the election being conducted or from making available self-service water from an unattended receptacle to an elector waiting in line to vote.

(f) Any person who violates this Code section shall be guilty of a misdemeanor.

History.

Ga. L. 1956, p. 333, § 1; Ga. L. 1961, p. 557, § 1; Code 1933, §§ 34-1307, 34-1938, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, § 3; Ga. L. 1977, p. 174, § 1; Ga. L. 1978, p. 1039, § 1; Ga. L. 1984, p. 674, § 1; Ga. L. 1985, p. 632, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 382, § 4; Ga. L. 1988, p. 647, § 3; Ga. L. 1989, p. 1084, § 3; Ga. L. 1993, p. 712, § 1; Ga. L. 1994, p. 1406, § 25; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 41; Ga. L. 2003, p. 517, § 47; Ga. L. 2005, p. 253, § 58/HB 244; Ga. L. 2010, p. 914, § 22/HB 540; Ga. L. 2012, p. 995, § 31/SB 92; Ga. L. 2016, p. 173, § 5/SB 199; Ga. L. 2017, p. 697, § 19/HB 268; Ga. L. 2021, p. 14, § 33/SB 202.

The 2021 amendment, effective March 25, 2021, inserted "nor shall any person give, offer to give, or participate in the giving of any money or gifts, including, but not limited to, food and drink, to an elector," near the middle of the first sentence in subsection (a) and inserted "or from making available self-service water from an unattended receptacle to an elector waiting in line to vote" at the end of subsection (e).

Cross references.

Prohibited placement of posters, signs, and advertisements, § 16-7-58.

Further provisions regarding prohibited activities in vicinity of voting compartment or voting booth, § 21-2-568.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person.

Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Constitutionality. — The U.S. Court of Appeals for the 11th Circuit found that a Florida electioneering statute was narrowly tailored to protect the compelling state interest of citizens to vote free from intimidation, interference, and fraud, and did not violate the First Amendment by banning exit solicitations about non-ballot issues within 100 feet of polling places; accordingly, the district court abused the court's discretion in granting a preliminary injunction. Citizens for Police Accountability Political Comm. v. Browning, 572 F.3d 1213, 2009 U.S. App. LEXIS 13785 (11th Cir. 2009), cert. denied, 559 U.S. 1086, 130 S. Ct. 2141, 176 L. Ed. 2d 756, 2010 U.S. LEXIS 3204 (2010).

O.C.G.A. § 21-2-414(a) infringed

upon the First Amendment's protection of political speech; however, a 25-foot limit on campaign and polling activities withstands constitutional scrutiny, and enforcement beyond that limit would be permanently enjoined. NBC v. Cleland, 697 F. Supp. 1204, 1988 U.S. Dist. LEXIS 11795 (N.D. Ga. 1988) (decided prior to 1993 amendment of this section).

Preliminary injunction against enforcement of O.C.G.A. § 21-2-414(b) was issued, where court was of the opinion that plaintiff challenging the statute on constitutional grounds would prevail at a final hearing. Committee for Sandy Springs, Ga., Inc. v. Cleland, 708 F. Supp. 1289, 1988 U.S. Dist. LEXIS 16610 (N.D. Ga. 1988).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-1206 are included in the annotations for this Code section.

Scope of area and activity open to campaign worker during election. — Except where there are no attempts at electioneering, it is legal for a candidate or a candidate's campaign worker to be present in a polling place, but outside an enclosed area during an election or to be present outside the polling place, but within a 250-foot limit, but it is illegal to engage in noncommunicative but otherwise campaign related activity, specifically, observing voters and checking a voters list, outside the polling place but within the 250-foot limit. 1982 Op. Att'y Gen. No. 82-30 (decided prior to 1989 amendment to subsection (b)).

Soliciting signatures on a petition for referendum is permissible within 250 feet of the polling place. 1968 Op. Att'y Gen. No. 68-370 (decided prior to 1989 amendment to subsection (b)).

Compilation of list of electors not solicitation. — The compilation of a list of names for the purpose of determining the identity of electors who have not voted, so that transportation can be furnished to such electors, is not itself an activity which would, without more, amount to a solicitation of votes within the meaning of this section. 1967 Op. Att'y Gen. No. 67-45 (see O.C.G.A. § 21-2-414).

Fingerprinting. — An offense under O.C.G.A. § 21-2-414 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

The Georgia Crime Information Center is not authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 21-2-414. 2001 Op. Att'y Gen. No. 2001-11.

Fingerprinting not required. — While the 2021 amendment to O.C.G.A. § 21-2-414(a) added to the list of misdemeanor offenses, those offenses remain offenses for which those charged are not to be fingerprinted. 2021 Op. Att'y Gen. No. 21-1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 354.
C.J.S.
29 C.J.S., Elections, §§ 332, 333.
ALR.
Validity, construction, and application of state statutes regulating solicitation or exit polling near voting precincts, 65 A.L.R.6th 441.

21-2-415. [Reserved] Requirements as to identification of campaign literature; unauthorized use of another's name in connection with campaign material; penalty.

History.
Ga. L. 1968, p. 828, § 1; Ga. L. 1978, p. 1039, § 2; Ga. L. 1985, p. 1328, § 1; Ga. L. 1986, p. 32, § 1; Ga. L. 1998, p. 295, § 1;

repealed by Ga. L. 2008, p. 781, § 12/HB 1112, effective July 1, 2008.

Editor's notes.

Ga. L. 2008, p. 781, § 12/HB 1112 repealed and reserved this Code section, effective July 1, 2008.

21-2-416. [Reserved] Methods of casting ballots in elections utilizing paper ballots or vote recorders.

History.

Ga. L. 1968, p. 850, § 1; Code 1933, § 34-1314.2, as redesignated by Ga. L. 1969, § 37; repealed by Ga. L. 1994, p. 279, § 7, effective July 1, 1994.

Editor's notes.

Ga. L. 1994, p. 279, § 7 repealed and reserved this Code section, effective July 1, 1994.

21-2-417. Presentation of proper identification to poll workers; swearing of statement when unable to produce; use of provisional ballots; penalty for false swearing.

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

(1) A Georgia driver's license which was properly issued by the appropriate state agency;

(2) A valid Georgia voter identification card issued under Code Section 21-2-417.1 or other valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector;

(3) A valid United States passport;

(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;

(5) A valid United States military identification card, provided that such identification card contains a photograph of the elector; or

(6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or

affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

(c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

History.

Code 1981, § 21-2-417, enacted by Ga. L. 1997, p. 662, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 15; Ga. L. 2003, p. 517, § 48; Ga. L. 2005, p. 253, § 59/HB 244; Ga. L. 2006, p. 3, § 2/SB 84.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 109 (2005).

For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 145 (2006).

For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008).

For article, "Ethics and Professionalism in the Digital Age: Ninth Annual Georgia Symposium on Ethics and Professionalism: A Symposium of the Mercer Law Review: Casenote: Constitutional Burdens on the Right to Vote: Crawford v. Marion County Election Board, Ian McMullen," see 60 Mercer L. Rev. 1007 (2009).

For article, "Reasonable Restrictions on the Franchise: Georgia's Voter Identification Act of 2006," see 63 Mercer L. Rev. 1129 (2012).

JUDICIAL DECISIONS

Constitutionality. — In an action by a political party challenging the 2006 Photo ID Act, amending O.C.G.A. § 21-2-417, no voter was disenfranchised by the Act and, therefore, the Act did not violate Ga. Const. 1983, Art. II, Sec. I, Para. III.

Democratic Party of Ga., Inc. v. Perdue, 288 Ga. 720, 707 S.E.2d 67, 2011 Ga. LEXIS 184 (2011).

In an action by a political party challenging the 2006 Photo ID Act, amending O.C.G.A. § 21-2-417, the photo ID requirement for in-person voting was authorized by Ga. Const. 1983, Art. II, Sec. I, Para. I as a reasonable procedure for verifying that the individual appearing to vote in person was actually the same person who registered to vote. Democratic Party of Ga., Inc. v. Perdue, 288 Ga. 720, 707 S.E.2d 67, 2011 Ga. LEXIS 184 (2011).

Equal protection. — Because it was likely that the voting organizations could prevail on the merits of their claims that the photo identification requirement of O.C.G.A. § 21-2-417 violated the equal protection clause, a preliminary injunction was issued preventing its enforcement or application; many voters with no other ID had no transportation to the service centers, impairments precluded waiting in lengthy lines or an inability to travel during business hours, and thus the requirement would be a hardship for many such voters, making the exercise of the fundamental right to vote extremely difficult, especially affecting the elderly, poor, and African-American voters. Common Cause/GA v. Billups, 406 F. Supp. 2d 1326, 2005 U.S. Dist. LEXIS 26222 (N.D. Ga. 2005), dismissed in part, No. 4:05-CV-0201-HLM, 2006 U.S. Dist. LEXIS 116451 (N.D. Ga. June 29, 2006), dismissed in part, No. 4:05-CV-0201-HLM, 2007 U.S. Dist. LEXIS 117246 (N.D. Ga. Aug. 17, 2007).

Court enjoined the enforcement of the photo identification requirement of the 2006 Photo ID Act, codified at O.C.G.A. §§ 21-2-417, 21-2-417.1, and 40-5-103(d), because the requirement unduly burdened the right to vote in violation of the Fourteenth Amendment's equal protection clause, at least with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections; the nonprofit organizations and their constituents would have suffered irreparable harm if the court did not grant a preliminary injunction with respect to those elections and, considering the right at issue and the likely injury caused by not entering a preliminary injunction, the threatened harm to the nonprofit organizations outweighed the potential injury to the state and various election officials; finally, entering a preliminary injunction for the elections at issue served the public interest by preserving voting rights. Common Cause/Georgia v. Billups, 439 F. Supp. 2d 1294, 2006 U.S. Dist. LEXIS 56100 (N.D. Ga. 2006), dismissed, 504 F. Supp. 2d 1333, 2007 U.S. Dist. LEXIS 68950 (N.D. Ga. 2007).

Permanent injunction barring enforcement of O.C.G.A. § 21-2-417 was properly denied because under the Fourteenth Amendment equal protection clause, the legitimate interest of the state in preventing voter fraud justified the insignificant burden of requiring all voters to present photo identification before the voters voted in person. Common Cause/Georgia v. Billups, 554 F.3d 1340, 2009 U.S. App. LEXIS 593 (11th Cir.), cert. denied, 556 U.S. 1282, 129 S. Ct. 2770, 174 L. Ed. 2d 271, 2009 U.S. LEXIS 4201 (2009).

In an action by a political party challenging the 2006 Photo ID Act, amending O.C.G.A. § 21-2-417, the Act did not violate the equal protection clause of Ga. Const. 1983, Art. I, Sec. I, Para. II because the photo ID requirement as implemented was a minimal, reasonable, nondiscriminatory restriction that was warranted by the important regulatory interest of preventing voter fraud. Democratic Party of Ga., Inc. v. Perdue, 288 Ga. 720, 707 S.E.2d 67, 2011 Ga. LEXIS 184 (2011).

No standing to challenge constitutionality. — A plaintiff lacked standing to challenge the constitutionality of the 2006 Photo-ID Act, codified at O.C.G.A. §§ 21-2-417, 21-2-417.1 and 40-5-103(d), at the time the complaint was filed, and thus the determination that the Act violated Ga. Const. 1983, Art. II, Sec. I, Paras. II and III had to be vacated; the plaintiff could have voted in person under O.C.G.A. § 21-2-417 without a photo identification as the plaintiff did not contend that the plaintiff lacked any of the forms of non-photo identification allowed to be shown by first-time voters. Perdue v. Lake, 282 Ga. 348, 647 S.E.2d 6, 2007 Ga. LEXIS 433 (2007).

Organization had standing to challenge. — Civil rights organization had standing under U.S. Const. Art. III to

challenge O.C.G.A. § 21-2-417 requiring voters to present photo identification prior to voting in person because the organization suffered a sufficient injury by forcing the organization to divert resources to counteract allegedly illegal acts. Common Cause/Georgia v. Billups, 554 F.3d 1340, 2009 U.S. App. LEXIS 593 (11th Cir.), cert. denied, 556 U.S. 1282, 129 S. Ct. 2770, 174 L. Ed. 2d 271, 2009 U.S. LEXIS 4201 (2009).

Preliminary injunction. — Because it was likely that voting organizations could prevail on the merits of their claims that the photo identification requirement of O.C.G.A. § 21-2-417 violated the Twenty-Fourth amendment, a preliminary injunction was issued preventing enforcement or application of the requirement; having to buy the photo ID, the cost of which had also increased, placed a cost on voting. Common Cause/GA v. Billups, 406 F. Supp. 2d 1326, 2005 U.S. Dist. LEXIS 26222 (N.D. Ga. 2005), dismissed in part, No. 4:05-CV-0201-HLM, 2006 U.S. Dist. LEXIS 116451 (N.D. Ga. June 29, 2006), dismissed in part, No. 4:05-CV-0201-HLM, 2007 U.S. Dist. LEXIS 117246 (N.D. Ga. Aug. 17, 2007).

Invalidation of election reversed on appeal. — Trial court erred by invalidating an election for sheriff and ordering a new election because the evidence of systemic misconduct for vote buying and alleged wrongful distribution of absentee ballots was speculative and insufficient to support the trial court's conclusion that irregularities cause doubt on the results. Meade v. Williamson, 293 Ga. 142, 745 S.E.2d 279, 2013 Ga. LEXIS 502 (2013).

RESEARCH REFERENCES

ALR.

Constitutionality of requiring presentation of photographic identification in order to vote, 27 A.L.R.6th 541.

Voter identification requirements as denying or abridging right to vote on account of race or color under § 2 of Voting Rights Act, 52 U.S.C.A. § 10301, 12 A.L.R. Fed. 3d 4.

21-2-417.1. Voter identification card.

(a) Each county board of registrars shall provide at least one place in the county at which it shall accept applications for and issue Georgia voter identification cards to registered Georgia electors which shall under state law be valid only for purposes of voter identification under Code Section 21-2-417 and available only to registered electors of this state. No fee shall be charged or collected for the application for or issuance of a Georgia voter identification card.

(b) No person shall be eligible for a Georgia voter identification card if such person has a valid unexpired driver's license or identification card issued under Code Section 40-5-100.

(c) The Georgia voter identification card shall be captioned "GEORGIA VOTER IDENTIFICATION CARD" and shall contain a prominent statement that under Georgia law it is valid only as identification for voting purposes. The Georgia voter identification card shall be laminated, shall contain a digital color photograph of the applicant, and shall include the following information:

(1) Full legal name;

(2) Address of residence;

(3) Birth date;

(4) Date identification card was issued;

(5) Sex;

(6) Height;

(7) Weight;

(8) Eye color;

(9) County where the identification card was issued including a county number to be assigned for each county by the Secretary of State; and

(10) Such other information or identification as required by rule of the State Election Board.

(d) The application for a Georgia voter identification card shall elicit the information required under subsection (c) of this Code section and such other information as may be required by rule of the State Election Board. The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute a felony offense under Code Section 16-10-71, relating to the offense of false swearing.

(e) The board of registrars shall require presentation and verification of the following information before issuing a Georgia voter identification card to a person:

(1) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth;

(2) Documentation showing the person's date of birth;

(3) Evidence that the person is registered to vote in this state; and

(4) Documentation showing the person's name and address of principal residence.

(f) A Georgia voter identification card shall remain valid so long as a person resides in the same county and remains qualified to vote. It shall be the duty of a person who moves his or her residence within the State of Georgia outside of the county in which it was issued to surrender his or her card to the board of registrars of the county of his or her new residence; and such person may after such surrender apply for and receive a new card if such person is otherwise eligible under this Code section. It shall be the duty of a person who moves his or her residence outside the State of Georgia or who ceases to be qualified to vote to surrender his or her card to the board of registrars by which it was issued.

(g) The Secretary of State shall provide each county board of registrars with the necessary equipment, forms, supplies, and training for the production of the Georgia voter identification cards and shall maintain such equipment.

(h) Without in any way limiting the authority of the Secretary of State under subsection (g) of this Code section, the State Election Board shall adopt rules and regulations for the administration of this Code section and, without limiting the generality of the foregoing, such rules and regulations may further define or prescribe the types of documentation required under subsection (e) of this Code section.

History.
Code 1981, § 21-2-417.1, enacted by Ga. L. 2006, p. 3, § 2/SB 84; Ga. L. 2008, p. 781, § 13/HB 1112; Ga. L. 2019, p. 7, § 36/HB 316.

Administrative rules and regulations.
Georgia Voter Identification Card, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Georgia Voter Identification Card, § 183-1-20-.01.

JUDICIAL DECISIONS

Equal protection. — Court enjoined the enforcement of the photo identification requirement of the 2006 Photo ID Act, codified at O.C.G.A. §§ 21-2-417, 21-2-417.1, and 40-5-103(d), because the requirement unduly burdened the right to vote in violation of the Fourteenth Amendment's equal protection clause, at least with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections; the nonprofit organizations and their constituents would have suffered irreparable harm if the court did not grant a preliminary injunction with respect to those elections and, considering the right at issue and the likely injury caused by not entering a preliminary injunction, the threatened harm to the nonprofit organizations outweighed the potential injury to the state and various election officials. Finally, entering a preliminary injunction for the elections at issue served the public interest by preserving voting rights. Common Cause/Georgia v. Billups, 439 F. Supp. 2d 1294, 2006 U.S. Dist. LEXIS 56100 (N.D. Ga. 2006), dismissed, 504 F. Supp. 2d 1333, 2007 U.S. Dist. LEXIS 68950 (N.D. Ga. 2007).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 60, 70.

ALR.
Voter identification requirements as denying or abridging right to vote on account of race or color under § 2 of Voting Rights Act, 52 U.S.C.A. § 10301, 12 A.L.R. Fed. 3d 4.

21-2-418. Provisional ballots.

(a) If a person presents himself or herself at a polling place, absentee polling place, or registration office in his or her county of residence in this state for the purpose of casting a ballot in a primary or election stating a good faith belief that he or she has timely registered to vote in such county of residence in such primary or election and the person's

name does not appear on the list of registered electors, the person shall be entitled to cast a provisional ballot in his or her county of residence in this state as provided in this Code section. If the person presents himself or herself at a polling place in the county in which he or she is registered to vote, but not at the precinct at which he or she is registered to vote, the poll officials shall inform the person of the polling location for the precinct where such person is registered to vote. The poll officials shall also inform such person that any votes cast by a provisional ballot in the wrong precinct will not be counted unless it is cast after 5:00 P.M. and before the regular time for the closing of the polls on the day of the primary, election, or runoff and unless the person executes a sworn statement, witnessed by the poll official, stating that he or she is unable to vote at his or her correct polling place prior to the closing of the polls and giving the reason therefor.

(b) Such person voting a provisional ballot shall complete an official voter registration form and a provisional ballot voting certificate which shall include information about the place, manner, and approximate date on which the person registered to vote. The person shall swear or affirm in writing that he or she previously registered to vote in such primary or election, is eligible to vote in such primary or election, has not voted previously in such primary or election, and meets the criteria for registering to vote in such primary or election. If the person is voting a provisional ballot in the county in which he or she is registered to vote but not at the precinct in which he or she is registered to vote during the period from 5:00 P.M. to the regular time for the closing of the polls on the day of the primary, election, or runoff, the person shall execute a sworn statement, witnessed by the poll official, stating that he or she is unable to vote at his or her correct polling place prior to the closing of the polls and giving the reason therefor. The form of the provisional ballot voting certificate shall be prescribed by the Secretary of State. The person shall also present the identification required by Code Section 21-2-417.

(c) When the person has provided the information as required by this Code section, the person shall be issued a provisional ballot and allowed to cast such ballot as any other duly registered elector subject to the provisions of Code Section 21-2-419.

(d) Notwithstanding any provision of this chapter to the contrary, in primaries and elections in which there is a federal candidate on the ballot, in the event that the time for closing the polls at a polling place or places is extended by court order, all electors who vote during such extended time period shall vote by provisional ballot only. Such ballots shall be separated and held apart from other provisional ballots cast by electors during normal poll hours. Primaries and elections in which there is no federal candidate on the ballot shall not be subject to the provisions of this subsection.

(e) The registrars shall establish a free access system, such as a toll-free telephone number or internet website, by which any elector who casts a provisional ballot in a primary or election, or runoff of either, in which federal candidates are on the ballot may ascertain whether such ballot was counted and, if such ballot was not counted, the reason why such ballot was not counted. The registrars shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by such free access system. Access to such information about an individual provisional ballot shall be restricted to the elector who cast such ballot. At the earliest time possible after the casting of a provisional ballot, the election superintendent shall notify the Secretary of State that an elector cast a provisional ballot, whether such ballot was counted, and, if such ballot was not counted, the reason why such ballot was not counted.

(f) At the time an elector casts a provisional ballot, the poll officers shall give the elector written information that informs the elector of the existence of the free access system required by subsection (e) of this Code section by which the elector will be able to ascertain if his or her ballot was counted and, if such ballot was not counted, the reason why such ballot was not counted.

(g) Failure to establish such free access system shall subject the registrars and the county by which the registrars are employed to sanctions by the State Election Board.

(h) Notwithstanding any other provision of this chapter to the contrary, in the event that the voting machines or DRE units at a polling place malfunction and cannot be used to cast ballots or some other emergency situation exists which prevents the use of such equipment to cast votes, provisional ballots may be used by the electors at the polling place to cast their ballots. In such event, the ballots cast by electors whose names appear on the electors list for such polling place shall not be considered provisional ballots and shall not require verification as provided by Code Section 21-2-419; provided, however, that persons whose names do not appear on the electors list for such polling place shall vote provisional ballots which shall be subject to verification under Code Section 21-2-419.

History.

Code 1981, § 21-2-418, enacted by Ga. L. 2002, p. 598, § 1-5; Ga. L. 2003, p. 517, § 49; Ga. L. 2005, p. 253, § 60/HB 244; Ga. L. 2017, p. 697, § 20/HB 268; Ga. L. 2019, p. 7, § 37/HB 316; Ga. L. 2021, p. 14, § 34/SB 202.

The 2021 amendment, effective March 25, 2021, added the last two sentences in subsection (a) and added the present third sentence in subsection (b).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not

codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas

voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Provisional ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Primaries and Elections, § 183-1-12-.18.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-419. Validation of provisional ballots; reporting to Secretary of State.

(a) A person shall cast a provisional ballot on the same type of ballot that is utilized by the county or municipality. Such provisional ballot shall be sealed in double envelopes as provided in Code Section 21-2-384 and shall be deposited by the person casting such ballot in a secure, sealed ballot box.

(b) At the earliest time possible after the casting of a provisional ballot, but no later than the day after the primary or election in which such provisional ballot was cast, the board of registrars of the county or municipality, as the case may be, shall be notified by the election superintendent that provisional ballots were cast in the primary or election and the registrars shall be provided with the documents completed by the person casting the provisional ballot as provided in Code Section 21-2-418. Provisional ballots shall be securely maintained

by the election superintendent until a determination has been made concerning their status. The board of registrars shall immediately examine the information contained on such documents and make a good faith effort to determine whether the person casting the provisional ballot was entitled to vote in the primary or election. Such good faith effort shall include a review of all available voter registration documentation, including registration information made available by the electors themselves and documentation of modifications or alterations of registration data showing changes to an elector's registration status. Additional sources of information may include, but are not limited to, information from the Department of Driver Services, Department of Family and Children Services, Department of Natural Resources, public libraries, or any other agency of government including, but not limited to, other county election and registration offices.

(c)(1) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person casting the provisional ballot timely registered to vote and was eligible and entitled to vote in the precinct in which he or she voted in such primary or election, the registrars shall notify the election superintendent and the provisional ballot shall be counted and included in the county's or municipality's certified election results.

(2) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person voting the provisional ballot timely registered and was eligible and entitled to vote in the primary or election but voted in the wrong precinct, then the board of registrars shall notify the election superintendent only if such person voted between the hours of 5:00 P.M. and the regular time for the closing of the polls on the day of the primary, election, or runoff and provided the sworn statement required by subsection (b) of Code Section 21-2-418. The superintendent shall count such person's votes which were cast for candidates in those races for which the person was entitled to vote but shall not count the votes cast for candidates in those races in which such person was not entitled to vote. The superintendent shall order the proper election official at the tabulating center or precinct to prepare an accurate duplicate ballot containing only those votes cast by such person in those races in which such person was entitled to vote for processing at the tabulating center or precinct, which shall be verified in the presence of a witness. Such duplicate ballot shall be clearly labeled with the word "Duplicate," shall bear the designation of the polling place, and shall be given the same serial number as the original ballot. The original ballot shall be retained and the sworn statement required by subsection (b) of Code Section 21-2-418 shall be transmitted to the Secretary of State with the certification documents required by paragraph (4) of subsection (a) of Code Section

21-2-497 and such statement shall be reviewed by the State Election Board.

(3) If the registrars determine that the person casting the provisional ballot did not timely register to vote or was not eligible or entitled to vote in the precinct in which he or she voted in such primary or election or shall be unable to determine within three days following such primary or election whether such person timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall so notify the election superintendent and such ballot shall not be counted. The election superintendent shall mark or otherwise document that such ballot was not counted and shall deliver and store such ballots with all other ballots and election materials as provided in Code Section 21-2-500.

(d)(1) At the earliest time possible after a determination is made regarding a provisional ballot, the board of registrars shall notify in writing those persons whose provisional ballots were not counted that their ballots were not counted because of the inability of the registrars to verify that the persons timely registered to vote or other proper reason. The registrars shall process the official voter registration form completed by such persons pursuant to Code Section 21-2-418 and shall add such persons to the electors list if found qualified.

(2) At the earliest time possible after a determination is made regarding a provisional ballot, the board of registrars shall notify in writing those electors who voted in the wrong precinct and whose votes were partially counted of their correct precinct.

(e) The board of registrars shall complete a report in a form designated by the Secretary of State indicating the number of provisional ballots cast and counted in the primary or election.

History.

Code 1981, § 21-2-419, enacted by Ga. L. 2002, p. 598, § 1-6; Ga. L. 2003, p. 151, § 1; Ga. L. 2008, p. 781, § 14/HB 1112; Ga. L. 2010, p. 914, § 23/HB 540; Ga. L. 2019, p. 7, § 38/HB 316; Ga. L. 2021, p. 14, § 35/SB 202.

The 2021 amendment, effective March 25, 2021, inserted "in the precinct in which he or she voted" near the middle of paragraph (c)(1); in paragraph (c)(2), inserted "only if such person voted between the hours of 5:00 P.M. and the regular time for the closing of the polls on the day of the primary, election, or runoff and provided the sworn statement required by subsection (b) of Code Section 21-2-418" at the end of the first sentence and inserted "and the sworn statement required by subsection (b) of Code Section 21-2-418 shall be transmitted to the Secretary of State with the certification documents required by paragraph (4) of subsection (a) of Code Section 21-2-497 and such statement shall be reviewed by the State Election Board" at the end; and inserted "in the precinct in which he or she voted" in the first sentence of paragraph (c)(3).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, pro-

vides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Provisional ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Primaries and Elections, § 183-1-12-.18.

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Obligation of county to take corrective steps. — O.C.G.A. §§ 21-2-419 and 21-2-499 expressly anticipate the potential need for a county to take additional corrective steps and resubmit the county's vote tally to the Secretary of State after the Secretary's remission of the original certification with questions. Common Cause Georgia v. Kemp, 347 F. Supp. 3d 1270, 2018 U.S. Dist. LEXIS 195340 (N.D. Ga. 2018).

21-2-420. Procedure for counting and tabulation of ballots.

(a) After the time for the closing of the polls and the last elector voting, the poll officials in each precinct shall complete the required accounting and related documentation for the precinct and shall advise the election superintendent of the total number of ballots cast at such

precinct and the total number of provisional ballots cast. The chief manager and at least one assistant manager shall post a copy of the tabulated results for the precinct on the door of the precinct and then immediately deliver all required documentation and election materials to the election superintendent. The election superintendent shall then ensure that such ballots are processed, counted, and tabulated as soon as possible and shall not cease such count and tabulation until all such ballots are counted and tabulated.

(b) The election superintendent shall ensure that each precinct notifies the election superintendent of the number of ballots cast and number of provisional ballots cast as soon as possible after the time for the closing of the polls and the last elector votes. The election superintendent shall post such information publicly. The State Election Board shall promulgate rules and regulations regarding how such information shall be publicly posted to ensure transparency, accuracy, and security.

History.

Code 1981, § 21-2-420, enacted by Ga. L. 2021, p. 14, § 36/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

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tered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

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"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

C.J.S. 29 C.J.S. Elections, § 379 et seq.

21-2-421. Posting of required information after closing of polls; reporting to Secretary of State.

(a) As soon as possible but not later than 11:59 P.M. following the close of the polls on the day of a primary, election, or runoff, the election superintendent shall report to the Secretary of State and post in a prominent public place the following information:

(1) The number of ballots cast at the polls on the day of the primary, election, or runoff, including provisional ballots cast;

(2) The number of ballots cast at advance voting locations during the advance voting period for the primary, election, or runoff; and

(3) The total number of absentee ballots returned to the board of registrars by the deadline to receive such absentee ballots on the day of the primary, election, or runoff.

(b) Upon the completion of the report provided for in subsection (a) of this Code section, the election superintendent shall compare the total number of ballots received as reported in subsection (a) of this Code section and the counting of the ballots in the primary, election, or runoff minus any rejected and uncured absentee ballots, uncounted provisional ballots, and any other uncounted ballots, with the total number of ballots cast in the primary, election, or runoff. The results of such comparison and all explanatory materials shall be reported to the Secretary of State. The reason for any discrepancy shall be fully investigated and reported to the Secretary of State.

History.
Code 1981, § 21-2-421, enacted by Ga. L. 2021, p. 14, § 36/SB 202; Ga. L. 2023, p. 614, § 4/SB 129, effective July 1, 2023.

Effective date.
This Code section became effective March 25, 2021.

The 2023 amendment, effective July 1, 2023, substituted "not later than 11:59 P.M." for "not later than 10:00 P.M." in the introductory language of subsection (a).

Editor's notes.
Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

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mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

Part 2

Precincts Using Paper Ballots

21-2-430. Opening of ballot boxes; destruction of irrelevant materials; locking of ballot box; public breaking of seals; instruction cards and notices of penalties.

In precincts in which ballots are used, the poll officers shall, after taking the oath, publicly open the ballot boxes which have been furnished to them and shall, prior to opening of the polls, totally destroy any ballots and other papers which they may find therein which are not intended for use in such primary or election. When the polling place is opened, the ballot box shall be securely locked and shall not be opened until the close of the polls, as provided in Code Section 21-2-436. At the opening of the polls, the seals of the packages furnished by the superintendent shall be publicly broken and such packages shall be opened by the chief manager. The cards of instruction shall be immediately posted in each voting compartment. One card of instruction, one notice of penalties, and one voting rights poster shall be immediately posted in or about the voting room outside the enclosed space; and such card of instruction, notice of penalties, and voting rights poster shall be given to any elector at his or her request so long as there are any on hand.

History.

Code 1933, § 34-1315, enacted by Ga. L. 1969, p. 308, § 15; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 61/HB 244.

21-2-431. Execution of voter's certificate; procedure upon qualification of elector; elector unable to sign name; voting outside precinct of residence; registration as prerequisite to voting.

(a) At every primary and election, each elector who desires to vote shall first execute a voter's certificate and hand the same to the poll officer in charge of the electors list. When an elector has been found entitled to vote, the poll officer who examined his or her voter's certificate shall sign his or her name or initials on the voter's certificate and shall, if the voter's signature is not readily legible, print such voter's name under his or her signature. As each elector is found to be qualified and votes, the poll officers shall check off the elector's name on the electors list and shall enter the number of the stub of the ballot issued to him or her, or his or her number in the order of admission to the voting machines, on the voter's certificate of such elector. As each elector votes, his or her name in the order of voting shall be recorded in the numbered list of voters provided for that purpose.

(b) If any elector was unable to sign his or her name at the time of registration or if, having been able to sign his or her name when registered, he or she subsequently shall have become, through physical disability, unable to sign his or her name when he or she applies to vote, he or she shall establish his or her identity to the satisfaction of the poll officers; and in such case he or she shall not be required to sign a voter's certificate, but a certificate shall be prepared for him or her by a poll officer.

(c) Except as provided in Code Sections 21-2-218 and 21-2-386, no person shall vote at any primary or election at any polling place outside the precinct in which such person resides, nor shall such person vote in the precinct in which such person resides unless such person has been registered as an elector and such person's name appears on the electors list of such precinct.

History.
Ga. L. 1894, p. 115, § 2; Civil Code 1895, § 40; Civil Code 1910, § 40; Code 1933, § 34-110; Code 1933, § 34-1316, enacted by Ga. L. 1969, p. 308, § 17; Ga. L. 1979, p. 962, § 2; Ga. L. 1982, p. 1512, § 5; Ga. L. 1994, p. 1443, § 6; Ga. L. 1998, p. 295, § 1; Ga. L. 2006, p. 888, § 7/HB 1435.

OPINIONS OF THE ATTORNEY GENERAL

Absentee and regular electors to be treated similarly. — In deciding upon the proper method for determining whether persons have voted within the past three years, it is important that absentee electors and regular electors be

treated as similarly as possible despite the varying procedures. 1974 Op. Att'y Gen. No. 74-133.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 312.

C.J.S.
29 C.J.S., Elections, §§ 70, 73, 75, 328.

21-2-432. Voter's certificate binder as official list of electors; preservation and disposition of refused applications.

After each elector has been admitted to vote, his or her voter's certificate shall be inserted in the binder provided therefor by the registrars, and known as the "voter's certificate binder," and such voter's certificates so bound shall constitute the official list of electors voting at such primary or election. All voter's certificates prepared by persons applying to vote whose applications to vote are refused by the poll officers shall be separately preserved and returned to the superintendent with the other papers.

History.
Ga. L. 1941, p. 429, § 1; Code 1933, § 34-1311, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1317, as redesignated by Ga. L. 1969, p. 308, § 9; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 75.

21-2-433. Admission of electors to enclosed space; detachment of ballots from stubs and distribution of ballots to electors; return of canceled ballots to superintendent.

(a) No elector shall enter the enclosed space behind the guardrail provided for in subsection (a) of Code Section 21-2-267 until he or she is found entitled to vote.

(b) As soon as an elector has been admitted within the enclosed space, the poll officer having charge of the ballots in precincts in which ballots are used shall detach a ballot from the stub and give it to the elector, first folding it so that the words and figures printed on the face shall not be visible, and no ballots shall be deposited in the ballot box unless folded in the same manner. If an elector's right to vote has been challenged for cause under Code Section 21-2-230, the elector shall be entitled to vote a challenged ballot. Not more than one ballot shall be detached from its stub in any book of ballots at any one time. Not more than one ballot shall be given to an elector; but, if an elector inadvertently spoils a ballot, such elector may obtain another upon returning the spoiled one. The ballots thus returned shall be immediately

canceled and at the close of the polls shall be enclosed in an envelope, which shall be sealed and returned to the superintendent.

History.
Ga. L. 1922, p. 97, § 4; Code 1933, § 34-1905; Ga. L. 1943, p. 290, § 1; Code 1933, § 34-1313, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1318, as redesignated by Ga. L. 1969, p. 308, § 12; Ga. L. 1983, p. 140, § 1; Ga. L. 1994, p. 1443, § 7; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 32/SB 92.

Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 284 et seq., 312, 328.

C.J.S.
29 C.J.S., Elections, §§ 339, 340, 344.

ALR.
Challenges to write-in ballots and certification of write-in candidates, 75 A.L.R.6th 311.

21-2-434. Restrictions as to removal of ballots from book or polling place; deposit of official ballots in box; disposition of unofficial ballots.

No official ballot shall be taken or detached from its stub in any book of ballots, except by a poll officer when a person desiring to vote has been found to be an elector entitled to vote. Not more than one ballot shall be removed at any one time or given to an elector, except in the case of a spoiled ballot as provided by this article. No person other than the poll officers shall take or remove any ballot from the polling place. Only official ballots shall be deposited in the ballot box and counted, except as otherwise provided in this article. If any ballot appears to have been obtained otherwise than from the superintendent as provided by this article, the same shall not be counted; and the chief manager shall transmit such ballot to the district attorney without delay, together with whatever information he or she may have regarding the same.

History.
Code 1933, § 34-1318, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1320, as redesignated by Ga. L. 1969, p. 308, § 19; Ga. L. 1998, p. 295, § 1.

Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 176. 26 Am. Jur. 2d, Elections, §§ 288, 318.

C.J.S.
29 C.J.S., Elections, §§ 340, 341.

21-2-435. Procedure as to marking and depositing of ballots.

(a) In precincts in which ballots are used, the elector, after receiving his or her ballot, shall retire to one of the voting compartments and draw the curtain or shut the screen or door and shall then prepare his or her ballot; provided, however, that an elector may, before entering the voting booth, ask for instructions concerning the manner of voting, and a poll officer shall give him or her such instructions; but no person giving an elector such instructions shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket or for any particular candidate or for or against any particular question. After giving such instructions and before the elector closes the booth or votes, the poll officer shall retire and the elector shall forthwith vote.

(b) At primaries, the elector shall prepare his or her ballot in the following manner: He or she shall vote for the candidates of his or her choice for nomination or election, according to the number of persons to be voted for by him or her, for each office, by making a cross (X) or check (√) mark in the square opposite the name of each candidate. No elector shall be permitted to cast a write-in ballot in a primary. A ballot upon which a voter has marked out or struck through the name of a candidate for whom the voter does not intend to cast his or her vote may be counted if the ballot clearly indicates that candidate for whom the voter desired to cast his or her vote.

(c) At elections, the elector shall prepare his or her ballot in the following manner:

(1) He or she may vote for the candidates of his or her choice for each office to be filled according to the number of persons to be voted for by him or her for each office, by making a cross (X) or check (√) mark in the square opposite the name of the candidate;

(2) He or she may write, in the blank space provided therefor, any name not already printed on the ballot, and such insertion shall count as a vote without the marking of a cross (X) or check (√) mark;

(3) Reserved;

(4) If he or she desires to vote for the presidential electors nominated by any party or body, he or she may make a cross (X) or check (√) mark in the appropriate square at the left of the names of the candidates for President and Vice President of such party or body;

(5) In case of a question submitted to the vote of the electors, he or she may make a cross (X) or check (√) mark in the appropriate square opposite the answer which he or she desires to give.

(d) Before leaving the voting compartment, the elector shall fold his or her ballot, without displaying the markings thereon, in the same way

it was folded when received by him or her; and he or she shall then leave the compartment and exhibit the number strip of the ballot to a poll officer who shall ascertain by an inspection of the number appearing thereon whether the ballot so exhibited to him or her is the same ballot which the elector received before entering the voting compartment. If it is the same, the poll officer shall direct the elector, without unfolding the ballot, to remove the perforated portion containing the number, and the elector shall immediately deposit the ballot in the ballot box. The number strip shall be deposited in the stub box provided for such purpose and the number strips shall be retained with the ballots and other stubs. Any ballot, other than one which has been challenged for cause under Code Section 21-2-230, deposited in a ballot box at any primary or election without having such number removed shall be void and shall not be counted.

History.
Ga. L. 1941, p. 324, § 2; Code 1933, § 34-1314, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 851, § 7; Ga. L. 1968, p. 871, § 12; Code 1933, § 34-1319, as redesignated by Ga. L. 1969, p. 308, § 13; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 133, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, Ex. Sess., p. 325, § 10; Ga. L. 2012, p. 995, § 33/SB 92.

JUDICIAL DECISIONS

Declaration of public policy. — The directions found in former Code 1933, §§ 34-1314 and 34-1222 (see now O.C.G.A. §§ 21-2-435 and 21-2-438) as to how a voter should mark a ballot and as to what ballots shall or shall not be counted, though specifically referring to the paper ballot, are declarations of public policy by the legislature. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 288, 321 et seq.

C.J.S.
29 C.J.S., Elections, §§ 295 et seq., 340 et seq.

21-2-436. Duties of poll officers after the close of the polls.

After the polls are closed and the last elector has voted in precincts in which ballots are used, at least two poll officers shall remain within the enclosed space. Before the ballot box is opened, the number of ballots issued to electors, as shown by the stubs, and the number of ballots, if any, spoiled and returned by electors and canceled, shall be announced to all present in the voting room and entered upon the general returns of votes cast at such primary or election. The poll officer shall then compare the number of electors voting as shown by the stubs with the number of names shown as voting by the electors list, voter's certificates, and the numbered list of voters, and shall announce the result, and shall enter on the general returns the number of electors who have voted, as shown by the voter's certificates. If any differences exist, they

shall be reconciled, if possible; otherwise, they shall be noted on the general returns. The electors list, the voter's certificates, the numbered list of voters, and the stubs of all ballots used, together with all unused ballots, all spoiled and canceled ballots, and all rejected voter's certificates, shall then be placed in separate packages, containers, or envelopes and sealed before the ballot box is opened.

History.
Code 1933, § 34-1320, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1321, as redesignated by Ga. L. 1969, p. 308, § 21; Ga. L. 1978, p. 1004, § 27; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 133, § 1; Ga. L. 1998, p. 295, § 1.

Cross references.
Interfering with poll officers, § 21-2-569.

Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 358, 362, 364, 373.

C.J.S.
29 C.J.S., Elections, § 383 et seq.

21-2-437. Procedure as to count and return of votes generally; void ballots.

(a) After the polls close and as soon as all the ballots have been properly accounted for and those outside the ballot box as well as the voter's certificates, numbered list of voters, and electors list have been sealed, the poll officers shall open the ballot box and take therefrom all ballots contained therein. In primaries in which more than one ballot box is used, any ballots or stubs belonging to another party holding its primary in the same polling place shall be returned to the ballot box for the party for which they were issued. In primaries, separate tally and return sheets shall be prepared for each party, and separate poll officers shall be designated by the chief manager to count and tally each party's ballot. Where the same ballot box is being used by one or more parties, the ballots and stubs shall first be divided by party before being tallied and counted. The ballots shall then be counted one by one and a record made of the total number. Then the chief manager, together with such assistant managers and other poll officers as the chief manager may designate, under the scrutiny of one of the assistant managers and in the presence of the other poll officers, shall read aloud the names of the candidates marked or written upon each ballot, together with the office for which the person named is a candidate, and the answers contained on the ballots to the questions submitted, if any; and the other assistant manager and clerks shall carefully enter each vote as read and keep account of the same in ink on a sufficient number of tally papers, all of

which shall be made at the same time. All ballots, after being removed from the box, shall be kept within the unobstructed view of all persons in the voting room until replaced in the box. No person, while handling the ballots, shall have in his or her hand any pencil, pen, stamp, or other means of marking or spoiling any ballot. The poll officers shall immediately proceed to canvass and compute the votes cast and shall not adjourn or postpone the canvass or computation until it shall have been fully completed.

(b) When the vote cast for the different persons named upon the ballots and upon the questions, if any, appearing thereon, shall have been fully recorded in the tally papers and counted, the poll officers shall duly certify to the number of votes cast for each person and question and shall prepare in ink a sufficient number of general returns. The general returns shall show, in addition to the entries made thereon as aforesaid, the total number of ballots received from the superintendent, the number of ballots cast, the number of ballots declared void, the number of ballots spoiled and canceled, and any blank ballots cast, as well as the votes cast for each candidate. At elections, the number of votes cast for each candidate by each political party or body of which such candidate is a nominee shall be separately stated.

(c) In returning any votes cast for any person whose name is not printed on the ballot, the poll officers shall record any such names exactly as they were written on the ballot.

(d) Any ballot marked so as to identify the voter shall be void and not counted, except a ballot cast by a challenged elector whose name appears on the electors list; such challenged vote shall be counted as prima facie valid but may be voided in the event of an election contest. Any ballot marked by anything but pen or pencil shall be void and not counted. Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. If an elector shall mark his or her ballot for more persons for any nomination or office than there are candidates to be voted for such nomination or office, or if, for any reason, it may be impossible to determine his or her choice for any nomination or office, his or her ballot shall not be counted for such nomination or office; but the ballot shall be counted for all nominations or offices for which it is properly marked. Unmarked ballots or ballots improperly or defectively marked so that the whole ballot is void shall be set aside and shall be preserved with other ballots. In primaries, votes cast for candidates who have died, withdrawn, or been disqualified shall be void and shall not be counted. Except as provided in subsection (g) of Code Section 21-2-134 regarding nonpartisan elections, in elections, votes for candidates who have died or been disqualified shall be void and shall not be counted.

(e) Any ballot marked by any other mark than a cross (X) or check (√) mark in the spaces provided for that purpose shall be void and not counted; provided, however, that no vote recorded thereon shall be declared void because a cross (X) or check (√) mark thereon is irregular in form. Notwithstanding any other provisions of this chapter to the contrary, if the voter has marked his or her ballot in such a manner that he or she has indicated clearly and without question the candidate which he or she desires to receive his or her vote, his or her ballot shall be counted and such candidate shall receive his vote.

(f) At elections, a ballot indicating a write-in vote for any person whose name is not printed on the ballot and who properly gave notice of intent to run as a write-in candidate pursuant to Code Section 21-2-133 shall be counted as a vote for such person, if written in the proper space or spaces provided for that purpose, whether or not a cross (X) or check (√) mark is placed before the name of such person.

History.

Orig. Code 1863, § 1234; Code 1868, § 1315; Code 1873, § 1288; Code 1882, § 1288; Civil Code 1895, § 72; Civil Code 1910, § 82; Code 1933, § 34-1303; Code 1933, § 34-1321, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 656, § 1; Code 1933, § 34-1322, as redesignated by Ga. L. 1969, p. 308, § 22; Ga. L. 1970, p. 347, § 24; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, Ex. Sess., p. 311, § 2; Ga. L. 2001, Ex. Sess., p. 325, § 11; Ga. L. 2021, p. 14, § 37/SB 202.

The 2021 amendment, effective March 25, 2021, deleted ", except that, in the discretion of the superintendent, the poll officers may stop the counting after all contested races and questions are counted, provided that the results of these contested races and questions are posted for the information of the public outside the polling place and the ballots are returned to the ballot box and deposited with the superintendent until counting is resumed on the following day" at the end of subsection (a); and substituted "Except as provided in subsection (g) of Code Section 21-2-134 regarding nonpartisan elections, in elections" for "In elections" at the beginning of the last sentence of subsection (d).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provi-

sional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, § 34-1303 (see now O.C.G.A. § 21-2-437) was not in conflict with former Code 1933, § 34-1008 (see now O.C.G.A. § 21-2-152) since that section provided for primaries to be conducted like general elections "insofar as practicable," thus allowing for those instances when the general election and primary procedure must differ. 1970 Op. Att'y Gen. No. U70-100.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 358.

C.J.S.

29 C.J.S., Elections, § 382 et seq.

21-2-438. Ballots identifying voter, not marked, or improperly marked declared void.

(a) Any ballot marked so as to identify the voter shall be void and not counted, except a ballot cast by a challenged elector whose name appears on the electors list; such challenged vote shall be counted as prima facie valid but may be voided in the event of an election contest. Any ballot marked by anything but pen or pencil shall be void and not counted. Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. If an elector shall mark his or her ballot for more persons for any nomination or office than there are candidates to be voted for such nomination or office, or if, for any reason, it may be impossible to determine his or her choice for any nomination or office, his or her ballot shall not be counted for such nomination or office; but the ballot shall be counted for all nominations or offices for which it is properly marked. Ballots not marked or improperly or defectively marked so that the whole ballot is void shall be set aside and shall be preserved with the

other ballots. In primaries, votes cast for candidates who have died, withdrawn, or been disqualified shall be void and shall not be counted. Except as provided in subsection (g) of Code Section 21-2-134 regarding nonpartisan elections, in elections, votes for candidates who have died or been disqualified shall be void and shall not be counted.

(b) At elections, any ballot marked by any other mark than a cross (X) or check (√) mark in the spaces provided for that purpose shall be void and not counted; provided, however, that no vote recorded thereon shall be declared void because a cross (X) or check (√) mark thereon is irregular in form. A cross (X) or check (√) mark in the square opposite the names of the nominees of a political party or body for the offices of President and Vice President shall be counted as a vote for every candidate of that party or body for the offices of presidential electors. Any ballot indicating a write-in for any person whose name is not printed on the ballot and who properly gave notice of intent to run as a write-in candidate pursuant to Code Section 21-2-133 shall be counted as a vote for such person, if written in the proper space or spaces provided for that purpose, whether or not a cross (X) or check (√) mark is placed before the name of such person.

(c) Notwithstanding any other provisions of this chapter to the contrary and in accordance with the rules and regulations of the State Election Board promulgated pursuant to paragraph (7) of Code Section 21-2-31, if the elector has marked his or her ballot in such a manner that he or she has indicated clearly and without question the candidate for whom he or she desires to cast his or her vote, his or her ballot shall be counted and such candidate shall receive his or her vote, notwithstanding the fact that the elector in indicating his or her choice may have marked his or her ballot in a manner other than as prescribed by this chapter.

History.

Ga. L. 1952, p. 304, § 1; Code 1933, §§ 34-1322, 34-1322.1, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, §§ 9, 10; Code 1933, §§ 34-1323, 34-1324, as redesignated by Ga. L. 1969, p. 308, §§ 9, 24; Ga. L. 1987, p. 417, § 8; Ga. L. 1987, p. 1360, § 17; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 279, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 50; Ga. L. 2021, p. 14, § 38/SB 202.

The 2021 amendment, effective March 25, 2021, substituted "Except as provided in subsection (g) of Code Section 21-2-134 regarding nonpartisan elections, in elections" for "In elections" at the beginning of the last sentence in subsection (a).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes

were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020,

with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Definition of vote, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Returns of Primaries and Elections, § 183-1-15-.02.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Legislative declaration of public policy. — The directions as to how a voter should mark a ballot and as to what ballots shall or shall not be counted, though specifically referring to the paper ballot, are declarations of public policy by the legislature. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

It is the duty of the voter to make the voter's intention clear and certain, upon pain of having the vote cast out if that does not appear. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

Unless the ballot clearly demonstrates the voter's intention, those who are charged with the counting and tabulation of ballots should not be called upon to surmise as to what the intent may have been — for they may well come to the wrong conclusion. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

"Over-vote" voids ballot as to specific office. — An "over-vote" occurs when the voter appropriately marks the indicated space at the head of a party column on a ballot, indicating an intention to vote for all of that party's candidates, and also places marks opposite the names of an opposing candidate or candidates, indicating an intent to vote also for them, or when the voter marks a straight party ticket and additionally writes in the name of a candidate for one of the offices for which there is a candidate by that party. Where an over-vote has occurred, as to that office, or those offices, the ballot is invalid, but it is valid as to others. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

Vote recorder ballots. — Cardboard ballots "marked" by a punch are governed

by the provisions of O.C.G.A. § 21-2-438 pertaining to paper ballots and, thus, votes cast on vote recorder ballots for candidates who had withdrawn from the election were void. Jones v. Norris, 262 Ga. 468, 421 S.E.2d 706, 1992 Ga. LEXIS 914 (1992).

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Ballot which shows clear indication of intent is valid. — To give meaning to former Code 1933, §§ 34-1103, 34-1330, 34-1324 (see now O.C.G.A. §§ 21-2-285, 21-2-452 and 21-2-438) those statutes should be construed as requiring poll officers to count as valid ballots any ballot on which an elector has indicated clearly and without question the candidate for whom the elector desires to cast a vote, notwithstanding the fact the elector has not marked the ballot in accordance with the Election Code, except write-in ballots containing the name of the candidate inserted by means of a sticker, paster, stamp, or other printed or written matter. 1976 Op. Att'y Gen. No. U76-45.

Abbreviations in write-in votes. — An elector, when casting a write-in vote, may use abbreviations in the title of the office if the write-in office has been abbreviated in such a way that the elector has indicated clearly and without question the office for which the elector voted. 1968 Op. Att'y Gen. No. 68-434.

Use of stickers, pasters, and stamps. — Former Code 1933, § 34-1324 (see now O.C.G.A. § 21-2-438) did not remove the restrictions on the use of stickers, pasters, and stamps, as contained in former Code 1933, §§ 34-1103 and 34-1330 (see now O.C.G.A. §§ 21-2-285 and 21-2-452). 1976 Op. Att'y Gen. No. U76-45.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 319 et seq.

C.J.S.
29 C.J.S., Elections, §§ 294, 299, 305 et seq., 318 et seq.

21-2-439. Decisions concerning questionable marks or defaced or mutilated ballots.

Decisions concerning questionable marks on ballots or defacing or mutilation of ballots and the count to be recorded thereon shall be made by the assistant managers; and, if they disagree, the chief manager shall make the decision.

History.
Code 1933, § 34-1323, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1325, as redesignated by Ga. L. 1969, p. 308, § 25; Ga. L. 1998, p. 295, § 1.

Administrative rules and regulations.
Definition of vote, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Returns of Primaries and Elections, § 183-1-15-.02.

21-2-440. Duty of poll officers to sign general returns; posting of copy of returns; delivery of copy of materials to superintendent.

(a) Immediately after the vote has been counted in precincts in which

paper ballots are used, all of the general returns shall be signed by the poll officers. If any poll officer shall refuse to sign or certify the general returns, he or she shall write his or her reasons therefor upon the general return sheets. One of such returns shall be immediately posted for the information of the public outside the polling place or place of tabulation, one of such returns shall be returned sealed to the superintendent in an envelope prepared for the Secretary of State or the city clerk, and one shall be entrusted to the chief manager for delivery to the superintendent with the package of unused ballots and other election supplies in an envelope provided for that purpose. The poll officer shall then replace all the ballots cast, so counted and canvassed, in the ballot boxes, including those declared void, spoiled, and canceled, together with the voter's certificates, one set of the tally papers, one general return sheet, one numbered list of voters, sealed as provided in this subsection, and one oath of each poll officer, and lock and seal each ballot box so that nothing can be inserted therein until it is opened again; and the chief manager and an assistant manager shall immediately deliver the ballot boxes to the custody of the superintendent. The superintendent shall not compute any returns from any precinct until the ballot boxes therefor, as well as the package of unused ballots and other election supplies therefrom, are so delivered.

(b) The tally papers, affidavits of voters and others, including oaths of poll officers, and one general return sheet shall be placed in separate envelopes to be provided for that purpose and sealed as soon as the count is finally completed. All of such envelopes and one numbered list of voters, previously sealed as provided in subsection (a) of this Code section, shall be entrusted to the chief manager to be delivered immediately to the superintendent.

(c) Immediately upon completion of the count and tabulation of the votes cast, the electors list shall be sealed and returned by the chief manager to the superintendent, who shall transmit it to the registrars.

History.
Orig. Code 1863, § 1234; Code 1868, § 1315; Code 1873, § 1288; Code 1882, § 1288; Civil Code 1895, § 72; Civil Code 1910, § 82; Code 1933, § 34-1303; Code 1933, § 34-1324, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1326, as redesignated by Ga. L. 1969, p. 308, § 26; Ga. L. 1970, p. 347, § 25; Ga. L. 1978, p. 1004, § 28; Ga. L. 1982, p. 1512, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1998, p. 295, § 1.

Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

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Votes for a candidate who has indicated a wish to withdraw must be counted. 1965-66 Op. Att'y Gen. No. 66-243.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 365.

C.J.S.
29 C.J.S., Elections, § 395 et seq.

PART 3

PRECINCTS USING VOTING MACHINES

Administrative rules and regulations.
Handling of voting machines, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Elections and Primaries, § 183-1-12-.06.

21-2-450. Opening of polls; procedure when ballot labels misplaced; certification by managers; machines to be locked until polls open; officers to be near machines; inspection of machines; broken machines.

(a)(1) In the precincts in which voting machines are used, the seals of the package furnished by the superintendent shall be publicly broken at the opening of the polls and such package shall be opened by the chief manager. One card of instructions, one notice of penalties, one voting rights poster, and not less than two diagrams of the face of the machine shall be immediately posted in or about the voting room outside the enclosed space; and such cards, notices of penalties, and voting rights posters shall be given to any elector at his or her request, so long as there are any on hand.

(2) The managers, before opening the envelope containing the keys which unlock the operating mechanism and registering counters or counter compartment of the voting machine, shall examine the number of the seal on the machine and the number registered on the protective counter or device and shall see whether they are the same as the numbers written on the envelope containing the keys. If either number shall be found not to agree, the envelope shall remain unopened until the poll officers shall have notified the proper custodian of voting machines or the superintendent and until the custodian or some other person authorized by the superintendent shall have presented himself or herself at the polling place for the purpose of reexamining the machine and shall have certified that it is properly arranged. But, if the numbers on the seal and the protective counter or device shall both be found to agree with the numbers on the envelope, the envelope shall be opened, and where the voting machine provided is not equipped with a mechanism for printing paper proof sheets, the poll officers shall examine the registering counters and, for that purpose, shall open the doors concealing such counter, if the construction of the voting machine shall so require; and, before the polls are opened, each manager shall carefully

examine every counter and shall see that it registers zero. When the voting machine provided is equipped with a mechanism for printing paper proof sheets and requires the simultaneous use of three keys to unlock the registering counters or counter compartment, the chief manager shall deliver one of the two keys to an assistant manager, to be retained by him or her, and shall then print at least two proof sheets, one of which each manager shall carefully examine to ascertain whether every counter registers zero and shall then preserve such proof sheets to be signed by them and returned to the superintendent, with the duplicate return sheet, and shall sign and post the other proof sheet upon the wall of the polling place, where it shall remain until the polls are closed. The key delivered by the chief manager to such assistant manager, as provided in this paragraph, shall be retained by him or her until the polls have been closed; and the voting and counting mechanism of the machine shall have been locked and sealed against voting and shall then be returned to the chief manager, for return by him or her to the superintendent, as provided in this part.

(b) If the ballot labels containing the names of officers, political parties and bodies, candidates, and questions shall not be in their proper places on the voting machine, the poll officers shall immediately notify the proper custodian of voting machines or the superintendent, and the machine shall not be used until the custodian or some other person authorized by the superintendent shall have supplied ballot labels as provided in this subsection. If the ballot labels for a voting machine shall not be delivered at the time required or, if after delivery, they shall be lost, destroyed, or stolen, the superintendent or custodian shall cause other ballot labels to be prepared, printed, or written, as nearly in the form of the official ballot labels as practicable, and shall cause such ballot labels to be used in the same manner, as nearly as may be, as the official ballot labels would have been used.

(c) The managers shall sign a certificate showing:

(1) The identifying number or other designation of the voting machine;

(2) The delivery of the keys in a sealed envelope;

(3) The number on the seal upon the machine;

(4) The number registered on the protective counter or device;

(5) That all the counters were set at zero; and

(6) That the ballot labels are properly placed in the machine,

which certificate shall be returned by the chief manager to the superintendent with the other certificates, as provided in this part.

(d) The machine shall remain locked against voting until the polls are opened and shall not be operated except by electors in voting. If any counter is found not to register zero, the poll officers shall immediately notify the custodian or the superintendent, who shall, if practicable, adjust or cause the counters to be adjusted at zero; but, if it shall be found impracticable for the custodian or other person authorized by the superintendent to arrive in time so as to adjust such counters before the time set for opening the polls, the poll officers shall immediately make a written record of the designation or designating letter or number of such counter, together with the number registered thereon (called the initial number below) and shall sign and post the same upon the wall of the polling place, where it shall remain until the polls are closed; provided, however, that if the voting machine used is equipped with a mechanism for printing paper proof sheets, in any case where any counter is shown by such proof sheet not to register zero, if it shall be found impracticable to have such counter adjusted before the time set for opening the polls, the poll officer shall sign such printed proof sheet and post the same upon the wall of the polling place where it shall remain until the polls are closed; and, in filling out the returns of the election, if the final number of such counter is greater than the initial number, the poll officers shall subtract the initial number from the final number and enter the difference on the returns as the vote for the candidate or on the question represented by such counter; if the final number of such counter is less than the initial number, the poll officers shall add 1,000 to the final number, shall subtract the initial number from the sum so ascertained, and shall enter upon the returns as the vote for the candidate or on the question represented by such counter the final plus 1,000 less the initial number.

(e) The exterior of the voting machine and every part of the polling place shall be in plain view of the poll officers. The voting machine shall be located at the polling place, at least six feet back of the guardrail or barrier, in such a position that, unless its construction shall require otherwise, the ballot labels on the face of the machine can be seen plainly by the poll officers when the machine is not occupied by an elector.

(f) The poll officers shall not themselves be, nor allow any other person to be, in any position that will permit anyone to see or ascertain how an elector votes or how he or she has voted. A poll officer shall inspect the face of the machine at least once every hour during the time when the polls are open to see that the ballot labels are in their proper places and that the machine has not been damaged or tampered with.

(g) If during the primary or election a voting machine becomes inoperative in such manner that it cannot be readily repaired without exposing the count on the candidate counters, the poll officer shall

immediately lock and seal the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation. Upon the close of the polls, the poll officers shall perform their duties set forth in Code Sections 21-2-454 through 21-2-457 with respect to such machine. If necessary, because of the lack of another machine or other machines for use by the electors, after a voting machine becomes inoperative, paper ballots shall be used.

History.
Code 1933, § 34-1327, enacted by Ga. L. 1969, p. 308, § 30; Ga. L. 1977, p. 1053, § 9; Ga. L. 1978, p. 1004, § 29; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 62/HB 244; Ga. L. 2006, p. 69, § 1/SB 467.

JUDICIAL DECISIONS

Voter's right of secrecy for whom the voter cast a ballot is inviolate. Taggart v. Phillips, 242 Ga. 454, 249 S.E.2d 245, 1978 Ga. LEXIS 1249 (1978).

To cast doubt on an election, it is only necessary to show: (1) that electors voted in the particular contest being challenged, and (2) a sufficient number of them were not qualified to vote so as to cast doubt on the election. Taggart v. Phillips, 242 Ga. 454, 249 S.E.2d 245, 1978 Ga. LEXIS 1249 (1978).

Doubt may also be cast on an election by showing improper maintenance of the voting machines resulting in votes being miscast. Taggart v. Phillips, 242 Ga. 454, 249 S.E.2d 245, 1978 Ga. LEXIS 1249 (1978).

Number of votes necessary to cast doubt. — It must be shown that a sufficient number of electors voted illegally or were irregularly recorded in the contest being challenged to change or cast doubt on the election. Taggart v. Phillips, 242 Ga. 454, 249 S.E.2d 245, 1978 Ga. LEXIS 1249 (1978).

21-2-451. Execution of voter's certificate; procedure upon qualification of elector; elector unable to sign name; voting outside of precinct of residence; registration prerequisite to voting.

(a) At every primary and election, each elector who desires to vote shall first execute a voter's certificate and hand the same to the poll officer in charge of the electors list. When an elector has been found entitled to vote, the poll officer who examined his or her voter's certificate shall sign his or her name or initials on the voter's certificate and shall, if the voter's signature is not readily legible, print such voter's name under his or her signature. As each elector is found to be qualified and votes, the poll officers shall check off the elector's name on the electors list and shall enter the number of the stub of the ballot issued to him or her, or his or her number in the order of admission to the voting machines, on the voter's certificate of such elector. As each elector votes, his or her name in the order of voting shall be recorded in the numbered list of voters provided for that purpose.

(b) If any elector was unable to sign his or her name at the time of registration or, if having been able to sign his or her name when

registered, he or she subsequently shall have become, through physical disability, unable to sign his or her name when he or she applies to vote, he or she shall establish his or her identity to the satisfaction of the poll officers; and in such case he or she shall not be required to sign a voter's certificate, but a certificate shall be prepared for him or her by a poll officer.

(c) Except as provided in Code Sections 21-2-218 and 21-2-386, no person shall vote at any primary or election at any polling place outside the precinct in which such person resides, nor shall such person vote in the precinct in which such person resides unless such person has been registered as an elector and such person's name appears on the electors list of such precinct.

History.

Code 1933, § 34-1310, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1328, as redesignated by Ga. L. 1969, p. 308, § 7; Ga. L. 1982, p. 1512, § 5; Ga. L. 1994, p. 1443, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2006, p. 888, § 8/HB 1435.

Cross references.

Penalty for voting by unqualified elector, § 21-2-571.

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All polling places must be open. — Where a political party holds a primary in a county, the polling place in each and every election district (now precinct) must be opened. 1968 Op. Att'y Gen. No. 68-261.

Intent of residence requirement. — The General Assembly intended that no person could validly cast a ballot in the election district (now precinct) in which the person resides unless the person is registered in the district. 1968 Op. Att'y Gen. No. 68-220.

Requirement of voting in precinct of residence. — The fact that this section required persons to vote only in the election district (now precinct) in which they reside should be construed to mean residence in that election district (now precinct) which the elector departed and to which the elector intends to return. 1968 Op. Att'y Gen. No. 68-367.

Business address, in and of itself, does not fulfill the residency requirements of this section and an otherwise qualified elector may vote in the election district (now precinct) containing the elector's business address only when the district (now precinct) also contains the elector's residence. 1968 Op. Att'y Gen. No. 68-293.

Absentee and regular electors to be treated similarly. — In deciding upon the proper method for determining whether persons have voted within the past three years, it is important that absentee electors and regular electors be treated as similarly as possible despite the varying procedures. 1974 Op. Att'y Gen. No. 74-133.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 312.

C.J.S.

29 C.J.S., Elections, §§ 70, 73, 75, 328.

21-2-452. Admission of electors to enclosed space; voting procedure generally; procedure as to write-in votes; voting by electors whose right to vote is challenged; disabled voters.

(a) No elector shall enter the enclosed space behind the guardrail provided for in subsection (a) of Code Section 21-2-267 until he or she is found entitled to vote, after which he or she shall be admitted to the voting machine booth as soon as it is vacant and shall be permitted to vote.

(b) At primaries, before an elector is admitted to the voting machine, it shall be adjusted by the poll officer in charge thereof so that such elector will only be able to vote for the candidates of the party in whose primary he or she is then participating.

(c) At primaries or elections, an elector shall vote for each candidate individually by operating the key, handle, pointer, or knob upon or adjacent to which the name of such candidate is placed. In the case of a question submitted to the vote of the electors, the elector shall operate the key, handle, pointer, or knob corresponding to the answer which he or she desires to give.

(d) An elector may, at any election, vote for any person for any office, for which office his or her name does not appear upon the voting machine as a candidate, by a write-in ballot containing the name of such person, such ballot to be deposited, written, or affixed (but not by the use of a sticker or paster) in or upon the appropriate receptacle or device provided in or on the machine for that purpose, and in no other manner. Where two or more persons are to be elected to the same office and the names of such candidates are placed upon or adjacent to a single key, handle, pointer, or knob, and the voting machine requires that all write-in ballots voted for that office be deposited, written, or affixed in or upon a single receptacle or device, an elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine, with or without the name of one or more persons whose names do so appear. With these exceptions, no write-in ballot shall be cast on a voting machine for any person for any office if the person's name appears on the machine as a candidate for that office, and any ballot so cast shall be void and not counted. No elector shall be permitted to cast a write-in ballot in a municipal primary.

(e) At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the name of the party or body and followed by the names of the candidates

thereof for the office of President and Vice President, and the corresponding counter or registering device shall register votes cast for such presidential electors when thus voted for collectively. If an elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, or wholly of names of persons not in nomination by any party or body, he or she may write or deposit a paper ballot prepared by himself or herself in the receptacle provided in or on the machine for the purpose. The machine shall be so constructed that it will not be possible for any one elector to vote a straight party or body ticket for presidential electors and at the same time to deposit a ballot for presidential electors in such receptacle. When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body; and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine, as provided in this Code section.

(f) As soon as the elector has adjusted the voting machine so that it will record his or her choice for the various candidates to be voted for and his or her answers to the various questions are submitted, he or she shall operate the recording mechanism and immediately leave the voting machine booth.

(g) If an elector's right to vote has been challenged pursuant to Code Section 21-2-230, the elector shall not be permitted to vote on the voting machine but shall vote by ballot in the manner prescribed by this chapter.

(h) The superintendent shall make paper ballots available for disabled electors who, due to their disability, are unable to vote on a voting machine. Absentee ballots may be used for this purpose. The superintendent shall provide sufficient accommodations to permit such disabled elector to vote in private.

History.

Code 1933, § 34-1315, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 851, § 8; Code 1933, § 34-1330, as redesignated by Ga. L. 1969, p. 308, §§ 14, 14a; Ga. L. 1987, p. 1360, § 18; Ga. L. 1992, p. 56, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 279, § 9; Ga. L. 1994, p. 1443, § 9; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1998, p. 295, § 1.

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Ballot to be counted if clear indication of voter's intent. — Poll officers are required to count as valid ballots any ballot on which an elector has indicated

clearly and without question the candidate for whom the elector desires to cast a vote, notwithstanding the fact the elector has not marked the ballot in accordance with the Election Code, except for write-in ballots containing the name of the candidate inserted by means of a sticker, paster, stamp, or other printed or written matter. 1976 Op. Att'y Gen. No. U76-45.

Stickers, pasters, and stamps. — Former Code 1933, § 34-1324 (see now O.C.G.A. § 21-2-438) did not remove former Code 1933, § 34-1330 (see now O.C.G.A. § 21-2-452) restrictions on the use of stickers, pasters, and stamps. 1976 Op. Att'y Gen. No. U76-45.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 316, 329 et seq.

C.J.S.
29 C.J.S., Elections, §§ 305 et seq., 344.

21-2-453. Voter's certificate binder as constituting official list; separate preservation and return of refused applications.

After each elector has been admitted to vote, his or her voter's certificate shall be inserted in the binder provided therefor and known as the "voter's certificate binder." Such voter's certificates so bound shall constitute the official list of electors voting at such primary or election. All voter's certificates prepared by persons applying to vote whose applications to vote are refused by the poll officers shall be separately preserved and returned to the superintendent with the other papers.

History.
Ga. L. 1941, p. 429, § 1; Code 1933, § 34-1329, enacted by Ga. L. 1969, p. 308, § 33; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 75.

21-2-454. Duties of poll officers after the close of the polls.

(a) As soon as the polls are closed and the last elector has voted, the poll officers shall immediately lock and seal the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation, and they shall then sign a certificate stating:

(1) That the machine has been locked against voting and sealed;

(2) The number, as shown on the public counter;

(3) The number on the seal which they have placed upon the machine;

(4) The number registered on the protective counter or device; and

(5) The number or other designation of the voting machine,

which certificate shall be returned by the chief manager to the superintendent with the other certificates, as provided in this part.

(b) The poll officers shall then compare the number, as shown by the public counter of the machine, with the number of names appearing on the numbered list of voters, the electors list, and voter's certificates, which shall then be placed in separate packages, containers, or envelopes and sealed.

History.
Code 1933, § 34-1325, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1331, as redesignated by Ga. L. 1969, p. 308, § 27; Ga. L. 1998, p. 295, § 1.

Cross references.
Interfering with poll officers, § 21-2-569.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-1336, are included in the annotations for this Code section.

Purpose of the provision for opening and counting ballots at the polls is to guard against any change in the ballots or in the number of ballots to be counted in determining the result, thus protecting the sanctity of the election process, which is a very important provision of the code requirements. Broome v. Martin, 111 Ga. App. 51, 140 S.E.2d 500, 1965 Ga. App. LEXIS 878 (1965) (decided under former Code 1933, § 34-1336).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34-1336, are included in the annotations for this Code section.

Hand-counting of votes on vote recorder ballots. — Poll officers may not hand-count votes on vote recorder ballots prior to their tabulation by machine at appropriate tabulation center. 1981 Op. Att'y Gen. No. 81-76 (decided under former Code 1933, § 34-1336).

Vote tabulation by poll officials. — Inference to be drawn from former Code 1933, §§ 34-1337 and 34-1336 (former O.C.G.A. §§ 21-2-472 and 21-2-473) is that, although vote tabulation by poll officials is allowable in some circumstances, such authority was consciously exempted where regular vote recorder ballots are concerned. 1981 Op. Att'y Gen. No. 81-76 (decided under former Code 1933, § 34-1336).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 358, 362, 364, 373.

21-2-455. Canvass and return of votes.

(a) If the type of voting machine provided shall require the counters to be seen in order to enable the poll officers to canvass the vote, the poll officers, in the presence of all persons within the polling place, shall then make visible the registering counters and, for that purpose, shall unlock and open the doors, or other covering concealing the same, giving full view of all the counter numbers. If the voting machine is equipped with a mechanism for printing paper proof sheets the poll officers shall immediately print not less than four proof sheets and as many more as may be requested by those present, to the extent of the machine's capacity. The chief manager and an assistant manager shall then, under the scrutiny of the other assistant manager, and in the order of the offices as their titles are arranged on the machine, read from the counters or from one of the proof sheets, as the case may be, and announce, in distinct tones, the designation or designating number and letter on each counter for each candidate's name, the result as shown by the counter numbers, the votes recorded for each office for persons other than nominated candidates, and the designation or designating numbers and letters on each counter, and the results as shown by the counter numbers for and against each question voted on. The counters shall not be read consecutively along the party or body rows or columns but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next.

(b) The vote as registered shall be entered by the poll officers, in ink, on duplicate return sheets and also on a general return sheet and statement, all of which, after the canvass is completed, shall be signed by the poll officers. If any poll officer shall refuse to sign or certify the general or duplicate return sheets or statement, he or she shall write his or her reasons therefor upon such sheets. The vote for presidential electors shall be computed and returned as provided in subsection (e) of Code Section 21-2-452. If more than one voting machine is used in any precinct, the vote registered on each machine shall be ascertained in like manner and separately entered in appropriate spaces on the general and duplicate return sheets and statement. The total vote cast for each candidate and for and against each question shall then be computed and entered on the general and duplicate return sheets and statement. There shall also be entered on the general return sheet and statement the number of electors who have voted, as shown by the numbered list of voters, electors list, and voter's certificates, and the number on each machine, as shown by the public counters. The number registered on the protective counter or device on each machine immediately prior to the opening of the polls and immediately after the closing thereof and sealing of the machine and the number or other

designation of each machine used shall also be entered thereon. In the case of primaries, duplicate return sheets shall be prepared as for other elections. The registering counters of the voting machine or the paper proof sheets, as the case may be, shall remain exposed to view until the said returns and all other reports have been fully completed and checked by the poll officers. During such time, anyone who may desire to be present shall be admitted to the polling place.

(c) The proclamation of the result of the votes cast shall be announced distinctly and audibly by the chief manager, who shall read the name of each candidate, the designation or designating numbers and letters of his or her counters, and the vote registered on each counter, as well as the vote cast for and against each question submitted. During such proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine or with the paper proof sheets, as the case may be, and any necessary corrections shall then and there be made by the poll officers, after which the doors or other cover of the voting machine shall be closed and locked. Any ballots written, deposited, or affixed in or upon the voting machine shall be enclosed in properly sealed packages and properly endorsed and shall be delivered by the chief manager as provided in this part. The chief manager shall promptly deliver to the superintendent or his or her representative the keys of the voting machine, enclosed in a sealed envelope, if the construction of the voting machine shall permit their separate return. Such envelope shall have endorsed thereon a certificate of the poll officers stating the number of the machine, the precinct where it has been used, the number on the seal, and the number on the protective counter or device at the close of the polls.

(d) The poll officers, on the returns provided for in this Code section, shall record any votes which have been cast by means of a write-in ballot for a person whose name is not printed on the ballot labels. In returning any such votes which have been written, deposited, or affixed upon receptacles or devices provided for the purpose, the poll officers shall record any such names exactly as they were written, deposited, or affixed.

History.

Code 1933, § 34-1326, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1332, as redesignated by Ga. L. 1969, p. 308, § 28; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1997, p. 590, § 36; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 367 et seq.

C.J.S.

29 C.J.S., Elections, §§ 395 et seq., 400 et seq.

21-2-456. Form of general return sheet, duplicate return sheets, and statement; posting of vote results; delivery of documents to superintendent; seal and return of electors list upon completion of vote count and tabulation.

(a) The general return sheets, duplicate return sheets, and statement shall be printed to conform with the type of voting machine used and in form approved by the Secretary of State. The designating number and letter, if any, on the counter for each candidate shall be printed thereon opposite the candidate's name. Immediately after the vote has been ascertained, the statement thereof shall be posted on the door of the polling place. Duplicate return sheets, voter's certificates, numbered list of voters, oaths of poll officers, and affidavits of voters and others shall be sealed and given to the chief manager, who shall deliver them, together with the general return sheet and the package of ballots deposited, written, or affixed in or upon the voting machine, to the superintendent. The voter's certificates, rejected voter's certificates, and oaths of assisted voters shall be sealed in a separate envelope addressed to the board of registrars and bearing a list of its contents on the outside. This envelope shall be immediately delivered by the managers into the custody of the superintendent. If the type of voting machine is equipped with a mechanism for printing paper proof sheets, one of such proof sheets shall be posted on the door of the polling place with such statement; one shall be returned with a precinct return sheet sealed in an envelope prepared for the Secretary of State; one shall be placed in the envelope and delivered with the general return sheet; and one shall be sealed in the envelope with the duplicate return sheets and delivered by the chief manager to the superintendent. The printed proof sheet returned with the general return sheet and the printed proof sheet returned with the duplicate return sheet shall each be part of the return of the primary or election.

(b) Immediately upon the completion of the count and tabulation of the vote cast, the electors list shall be sealed and returned immediately by the chief manager to the superintendent, who shall transmit it to the registrars.

History.

Code 1933, § 34-1327, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1333, as redesignated by Ga. L. 1969, p. 308, § 29; Ga. L. 1970, p. 347, § 26; Ga. L. 1983, p. 140, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 365.

C.J.S.
29 C.J.S., Elections, § 398.

21-2-457. Removal, storage, and examination of voting machines after completion of vote count.

As soon as possible after the completion of the count in precincts in which voting machines are used, the superintendent shall have the voting machines removed to the place of storage provided for in this chapter. The voting machines shall remain locked against voting for the period of ten days next following each primary and election, and as much longer as may be necessary or advisable because of any existing or threatened contest over the result of the primary or election, with due regard for the date of the next following primary or election, except that they may be opened and all the data and figures therein examined under this chapter, by order of any superior court of competent jurisdiction, or by direction of any legislative committee to investigate and report upon contested primaries or elections affected by the use of such machines. Such data and such figures shall be examined by such committee in the presence of the officer having the custody of such machines.

History.
Ga. L. 1959, p. 413, § 1; Code 1933, § 34-1332, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1334, as redesignated by Ga. L. 1969, p. 308, § 36; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Write-in vote by vote recorder consisting of candidate's last name and office the candidate seeks is valid. 1980 Op. Att'y Gen. No. 80-120.

PART 4

PRECINCTS USING VOTE RECORDERS

21-2-470 through 21-2-473. [Reserved]

History.
Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 12a; Code 1933, § 34-1335, as redesignated by Ga. L. 1969, p. 308, § 16; Ga. L. 1977, p. 1053, § 10; Ga. L. 1983, p. 140, § 1; Ga. L. 1991, p. 599, § 1; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1998, p. 295, § 1; Code 1933, § 34-1338, enacted by Ga. L. 1969, p. 308, § 38; Ga. L. 1973, p. 175, § 1; Ga. L. 1989, p. 842, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 16; Code 1933, § 34-1329, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1337, as redesignated by Ga. L. 1969, p. 308, § 33; Ga. L. 1978, p. 1004, § 30; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Code 1933, § 34-1328, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 14; Code 1933, § 34-1336, as redesignated by Ga. L. 1969, p. 308, § 31; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1989,

p. 842, § 2; Ga. L. 1998, p. 295, § 1; repealed by Ga. L. 2003, p. 517, § 51, effective July 1, 2003.

Editor's notes.

Ga. L. 2003, p. 517, § 51 repealed and reserved this article, effective July 1, 2003.

Part 5

Precincts Using Optical Scanning Voting Equipment

Cross references.

Optical scanning voting systems, § 21-2-365 et seq.

21-2-480. Caption for ballots; party designations; form and arrangement.

(a) At the top of each ballot for an election in a precinct using optical scanning voting equipment shall be printed in prominent type the words "OFFICIAL BALLOT," followed by the name and designation of the precinct for which it is prepared and the name and date of the election.

(b) Immediately under this caption on a ballot presenting the names of candidates for election to office, the following directions shall be printed, insofar as the same may be appropriate for the election involved:

(1) Optical scanners using ovals or squares. To vote blacken the oval or square (⬯ □) next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually write his or her name in the write-in section and blacken the oval or square next to the write-in section. If you spoil your ballot, do not erase, but ask for a new ballot. Use only the pen or pencil provided.

(2) Optical scanners using arrows. To vote, complete the arrow (⇨) to the right of the name of the candidate for whom you wish to vote. To vote for a person whose name is not on the ballot, manually write his or her name in the write-in space provided and complete the arrow. If you spoil your ballot, do not erase, but ask for a new ballot. Use only the pen or pencil provided.

(3) Marks made in violation of these directions shall be disregarded in the counting of the votes cast. The names of the persons inserted on the ballot by the elector shall be manually written only within the write-in section and the insertion of such names outside such section or by the use of a sticker, paster, stamp, or other printed or written matter is prohibited.

(c) The ballot for each candidate or group of candidates nominated by

a party or body shall contain the name or designation of the party or body.

(d) The titles of offices may be arranged horizontally with the names of candidates for an office arranged transversely under the title of the office. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot.

(e) The form and arrangement of ballots shall be prepared by the superintendent.

(f) Unless a candidate has filed with his or her nominating petition a certificate from a political party or body attesting that such candidate is the nominee of such party or body by virtue of having been nominated in a duly constituted party or body convention, the candidate's name shall appear on the ballot as an independent.

(g) When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President. The individual names or the nominees of each political party or body for such offices shall be posted at each polling place with the sample ballots required by subsection (c) of Code Section 21-2-375 arranged alphabetically under the names of the candidates of the party or body for President and Vice President of the United States. A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.

(h) When proposed constitutional amendments or other questions are submitted to a vote of the electors, each amendment or other question so submitted may be printed upon the ballot below the groups of candidates for the various offices. Proposed constitutional amendments so submitted shall be printed in the order determined by the Constitutional Amendments Publication Board and in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include the short title or heading provided for in subsection (c) of Code Section 50-12-101. Unless otherwise provided by law, any other statewide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot; and any local questions so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the superintendent. Next to

the question there shall be placed the words "YES" and "NO" together with appropriate ovals or squares or broken arrows to be marked.

(i) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require.

History.

Code 1981, § 21-2-480, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 29, § 3; Ga. L. 2001, p. 269, § 23; Ga. L. 2003, p. 517, § 52; Ga. L. 2012, p. 995, § 34/SB 92; Ga. L. 2021, p. 14, § 38A/SB 202.

The 2021 amendment, effective March 25, 2021, inserted "name and" near the end of subsection (a).

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence

while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.06.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-481. Design, size, and stock of ballots.

Ballots in a precinct using optical scanning voting equipment shall be of suitable design, size, and stock to permit processing by a tabulating machine and shall be printed in black ink on white or colored material. A serially numbered strip shall be attached to each ballot to be counted by a central count tabulator.

History.
Code 1981, § 21-2-481, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 1999, p. 29, § 4.

21-2-482. Absentee ballots for precincts using optical scanning voting equipment.

Ballots in a precinct using optical scanning voting equipment for voting by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars as provided in Code Section 21-2-384. Such ballots shall be marked "Official Absentee Ballot" and shall be in substantially the form for ballots required by Article 8 of this chapter, except that in counties or municipalities using voting machines, direct recording electronic (DRE) units, or ballot scanners, the ballots may be in substantially the form for the ballot labels required by Article 9 of this chapter or in such form as will allow the ballot to be machine tabulated. Every such ballot shall have printed on the face thereof the following:

> "I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

The form for either ballot shall be determined and prescribed by the Secretary of State and shall have printed at the top the name and designation of the precinct.

History.
Code 1981, § 21-2-482, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 2003, p. 517, § 53; Ga. L. 2019, p. 7, § 39/HB 316; Ga. L. 2021, p. 14, § 38B/SB 202.

The 2021 amendment, effective March 25, 2021, added "and shall have printed at the top the name and designation of the precinct" at the end of the last sentence of this Code section.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections,

with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-483. Counting of ballots; public accessibility to tabulating center and precincts; execution of ballot recap forms; procedure for torn, bent, or otherwise defective ballots; preparation of duplicate ballots.

(a) In primaries and elections in which optical scanners are used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent. All persons who perform any duties at the tabulating center shall be deputized by the superintendent, and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be inside the area designated for officers deputized to conduct the count.

(b) All proceedings at the tabulating center and precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the superintendent or the superintendent's authorized deputy shall touch any ballot or ballot container.

(c) At the tabulating center, the seal on each container of ballots shall be inspected, and it shall be certified that the seal has not been broken before the container is opened. The ballots and other contents of the container shall then be removed, and the ballots shall be prepared for processing by the tabulating machines. The ballots of each polling place shall be plainly identified and cannot be commingled with the ballots of other polling places.

(d) Upon completion of tabulation of the votes, the superintendent

shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

(1) The number of valid ballots, including any that are damaged;

(2) The number of spoiled and invalid ballots; and

(3) The number of unused ballots.

The superintendent shall cause to be placed one copy of the recap form and the defective, spoiled, and invalid ballots, each enclosed in an envelope, in the ballot supply container.

(e) For any election for which there is a qualified write-in candidate, the feature on precinct count and central count tabulators allowing separation of write-in votes shall be utilized. If any vote cast on the write-in ballot in combination with the vote cast for the same office on the ballot exceeds the allowed number for the office, the vote cast for that office only shall not be counted. In the discretion of the superintendent, either a duplicate ballot shall be made on which any invalid vote shall be omitted or the write-in ballot and the ballot shall be counted in such manner as may be prescribed by State Election Board rules, omitting the invalid vote.

(f) If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be processed by the tabulating machine, the superintendent, in his or her discretion, may order a duplication panel to prepare a true duplicate copy for processing. In a partisan election, the duplication panel shall be composed of the election superintendent or a designee thereof and one person appointed by the county executive committee of each political party having candidates whose names appear on the ballot for such election, provided that, if there is no organized county executive committee for a political party, the person shall be appointed by the state executive committee of the political party. In a nonpartisan election or an election involving only the presentation of a question to the electors, the duplication panel shall be composed of the election superintendent or a designee thereof and two electors of the county or municipality. In the case of a nonpartisan county or municipal election or an election involving only the presentation of a question to the electors, the two elector members of the panel shall be appointed by the chief judge of the superior court of the county or municipality in which the election is held. In the case of a municipality which is located in more than one county, the two elector members of the panel shall be appointed by the chief judge of the superior court of the county in which the city hall of the municipality is located. The election superintendent may create multiple duplication panels to handle the processing of such ballots more efficiently. All duplicate ballots shall be clearly labeled by the word “duplicate,” shall bear the designation of the polling place, and shall contain a unique

number that will allow such duplicate ballot to be linked back to the original ballot. The defective ballot shall be retained.

(g)(1) The central tabulator shall be programmed to reject any ballot, including absentee ballots, on which an overvote is detected and any ballot so rejected shall be manually reviewed by the vote review panel described in this Code section to determine the voter's intent as described in subsection (c) of Code Section 21-2-438.

(2)(A) In a partisan election, the vote review panel shall be composed of the election superintendent or designee thereof and one person appointed by the county executive committee of each political party and body having candidates whose names appear on the ballot for such election, provided that, if there is no organized county executive committee for a political party or body, the person shall be appointed by the state executive committee of the political party or body. In a nonpartisan election, the panel shall be composed of the election superintendent or designee thereof and two electors of the county, in the case of a county election, or the municipality, in the case of a municipal election, appointed by the chief judge of the superior court of the county in which the election is held or, in the case of a municipality which is located in more than one county, of the county in which the city hall of the municipality is located. The panel shall manually review all ballots rejected by the tabulator under paragraph (1) of this subsection and shall determine by majority vote whether the elector's intent can be determined as described in subsection (c) of Code Section 21-2-438 and, if so, said vote shall be counted as the elector intended. In the event of a tie vote by the vote review panel, the vote of the election superintendent or designee thereof shall control.

(B) The election superintendent may create multiple vote review panels in accordance with subparagraph (A) of this paragraph to handle the processing of such ballots more efficiently. Upon the creation of such panels, the election superintendent shall designate one of the panels as the chief vote review panel. In the event of a disagreement on such additional panels, the ballots in question shall be reviewed by the chief vote review panel and decided in accordance with the procedures contained in subparagraph (A) of this paragraph.

(h) The official returns of the votes cast on ballots at each polling place shall be printed by the tabulating machine. The returns thus prepared shall be certified and promptly posted. The ballots, spoiled, defective, and invalid ballots, and returns shall be filed and retained as provided by law.

History.

Code 1981, § 21-2-483, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 2003, p. 517, § 54; Ga. L. 2011, p. 683, § 17/SB 82; Ga. L. 2021, p. 14, § 39/SB 202.

The 2021 amendment, effective March 25, 2021, rewrote subsection (f), which read: "If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be processed by the tabulating machine, the superintendent, in his or her discretion, may order the proper election official at the tabulating center or precinct to prepare a true duplicate copy for processing with the ballots of the same polling place, which shall be verified in the presence of a witness. All duplicate ballots shall be clearly labeled by the word 'duplicate,' shall bear the designation of the polling place, and shall be given the same serial number as the defective ballot. The defective ballot shall be retained."

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

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"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

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"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

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"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Poll watchers, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Subject 183-1-13.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-484. Requirements for ballot recap form; delivery.

Upon completion of voting, the manager shall prepare and sign a ballot recap form, in sufficient counterparts, showing:

(1) The number of valid ballots, including any that are damaged;

(2) The number of spoiled and invalid ballots; and

(3) The number of unused ballots.

The manager shall then place one copy of the recap form and the defective, spoiled, and invalid ballots, each enclosed in an envelope, in the ballot container or in the case of counties using a central count tabulating system, in a separate envelope container, along with the voted ballots, which shall be sealed by the manager so that it cannot be opened without breaking the seal. The manager and one poll officer shall then deliver the ballot container and the envelope container, if applicable, to the tabulating machine center or other place designated by the superintendent and shall receive a receipt therefor. The copies of the recap forms, unused ballots, records, and other materials shall be returned to the designated location.

History.
Code 1981, § 21-2-484, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 29, § 5.

Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

21-2-485. Responsibilities of poll officers.

As soon as the polls are closed and the last elector has voted in precincts in which optical scanners are used, the poll officers shall:

(1) For central count optical scan ballots:

(A) Seal the ballot box and deliver the ballot box to the tabulating center, as designated by the superintendent; and

(B)(i) Examine the ballots and separate those ballots containing write-in votes.

(ii) Record in ink the designation of the polling place and a serial number on all write-in ballots, starting with the number one, and place the same number on the ballot voted by the same elector, so that write-in ballots may be identified with the corresponding ballots.

(iii) After the write-in ballots have been so marked, place the write-in ballots in an envelope marked "Write-in Ballots" and designate the polling place and the number of write-in ballots contained therein on such envelope, which shall be sealed and signed by the managers and placed in the ballot container with the other ballots.

(iv) Place any ballot that is so torn, bent, or mutilated that it may not be counted by the tabulating machine in an envelope

marked "Defective Ballots" and place the envelope in the container with other ballots; and

(2) For precinct count optical scan ballots:

(A) Feed ballots from the auxiliary compartment of the ballot box, if any, through the tabulator; and

(B) After all ballots have been fed through the tabulator the poll officer shall cause the tabulator to print out a tape with the total votes cast in each election.

History.
Code 1981, § 21-2-485, enacted by Ga. L. 1998, p. 1231, § 41.

21-2-486. Votes for write-in candidates.

The superintendent, in computing the votes cast at any election, shall compute and certify only those write-in votes properly cast for candidates who have given proper notice of intent to be write-in candidates pursuant to Code Section 21-2-133 exactly as such names were written by the elector.

History.
Code 1981, § 21-2-486, enacted by Ga. L. 1998, p. 1231, § 41.

ARTICLE 12

RETURNS

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Chapter 34-32 are included in the annotations for this article.

Once a decision to hold a primary is made, state statutes take hold and direct every essential step from registration and qualification of voters to the placing of the names of the nominees on the general election ballot. King v. Chapman, 62 F. Supp. 639, 1945 U.S. Dist. LEXIS 1841 (D. Ga. 1945), aff'd, 154 F.2d 460, 1946 U.S. App. LEXIS 2069 (5th Cir. 1946) (decided under former Code 1933, Ch. 34-32).

RESEARCH REFERENCES

ALR.
Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.

Power of election officers to withdraw or change their returns, 168 A.L.R. 855.

21-2-490. Hours of operation of office of superintendent and chairperson of county board of registrars on primary and election days; applicability to counties having population of 550,000 or more.

(a) Each superintendent shall cause his or her office to remain open during the entire duration of each primary and election and after the close of the polls, until all the ballot boxes and returns have been received in the office of the superintendent or received in such other place as has been designated by him or her.

(b) The chairperson of the county board of registrars shall cause his or her office to remain open during the entire duration of each primary and election and after the close of the polls, until completion of the duties of said board. The provisions of this subsection shall not apply with respect to such offices in counties of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census.

History.
Code 1933, § 34-1501, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 28; Ga. L. 1979, p. 765, § 1; Ga. L. 1980, p. 1256, § 5; Ga. L. 1981, p. 535, § 1; Ga. L. 1982, p. 2107, § 24; Ga. L. 1998, p. 295, § 1.

21-2-491. Public inspection of unsealed returns at office of superintendent; opening of sealed envelopes upon order of superintendent or court.

The general returns from the various precincts which have been returned unsealed shall be open to public inspection at the office of the superintendent as soon as they are received from the chief managers. None of the envelopes sealed by poll officers and entrusted to the chief manager for delivery to the superintendent shall be opened by any person except by order of the superintendent or of a court of competent jurisdiction.

History.
Code 1933, § 34-1502, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1.

21-2-492. Computation and canvassing of returns; notice of place where returns will be computed and canvassed; blank forms for making statements of returns; swearing of assistants.

The superintendent shall arrange for the computation and canvassing of the returns of votes cast at each primary and election at his or her office or at some other convenient public place at the county seat or municipality following the close of the polls on the day of such primary

or election with accommodations for those present insofar as space permits. An interested candidate or his or her representative shall be permitted to keep or check his or her own computation of the votes cast in the several precincts as the returns from the same are read, as directed in this article. The superintendent shall give at least one week's notice prior to the primary or election by publishing same in a conspicuous place in the superintendent's office, of the place where he or she will commence and hold his or her sessions for the computation and canvassing of the returns; and he or she shall keep copies of such notice posted in his or her office during such period. The superintendent shall procure a sufficient number of blank forms of returns made out in the proper manner and headed as the nature of the primary or election may require, for making out full and fair statements of all votes which shall have been cast within the county or any precinct therein, according to the returns from the several precincts thereof, for any person voted for therein, or upon any question voted upon therein. The assistants of the superintendent in the computation and canvassing of the votes shall be first sworn by the superintendent to perform their duties impartially and not to read, write, count, or certify any return or vote in a false or fraudulent manner.

History.

Code 1933, § 34-1503, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 35/SB 92; Ga. L. 2021, p. 14, § 40/SB 202.

The 2021 amendment, effective March 25, 2021, inserted "following the close of the polls on the day of such primary or election" near the middle of the first sentence, and deleted "time and" following "superintendent's office, of the" and deleted "when and" following "place" near the middle of the third sentence.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

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"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county.

More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

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"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours

of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Intent of section. — In O.C.G.A. § 21-2-492 and other statutory provisions, the General Assembly expressed an intent that the public inform itself of the accuracy of the voting process. It would be inconsistent with that intent to permit someone to force a recount under O.C.G.A. § 21-2-524(c) based on the mere speculative belief that an error in counting occurred. Ellis v. Johnson, 263 Ga. 514, 435 S.E.2d 923, 1993 Ga. LEXIS 787 (1993).

21-2-493. Computation, canvassing, and tabulation of returns; investigation of discrepancies in vote counts; recount procedure; pilot program for posting of digital images of scanned paper ballots; certification of returns; change in returns.

(a) The superintendent shall, after the close of the polls on the day of a primary or election, at his or her office or at some other convenient public place at the county seat or in the municipality, of which due notice shall have been given as provided by Code Section 21-2-492, publicly commence the computation and canvassing of the returns and continue until all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast on the day of the primary or election have been counted and tabulated and the results of such tabulation released to the public and, then, continuing with provisional ballots as provided in Code Sections 21-2-418 and 21-2-419 and those absentee ballots as provided in subparagraph (a)(1)(G) of Code Section 21-2-386 from day to day until completed. For this purpose, the superintendent may organize his or her assistants into sections, each of whom may simultaneously proceed with the computation and canvassing of the returns from various precincts of the county or municipality in the manner provided by this Code section. Upon the completion of such computation and canvassing, the superintendent shall tabulate the figures for the entire county or municipality and sign, announce, and attest the same, as required by this Code section.

(b) The superintendent, before computing the votes cast in any

precinct, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had. Such excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession. The superintendent shall then examine all the registration and primary or election documents whatever relating to such precinct in the presence of representatives of each party, body, and interested candidate. Such examination may, if the superintendent deems it necessary, include a recount or recanvass of the votes of that precinct and a report of the facts of the case to the district attorney where such action appears to be warranted.

(c) In precincts in which paper ballots have been used, the superintendent may require the production of the ballot box and the recount of the ballots contained in such ballot box, either generally or respecting the particular office, nomination, or question as to which the excess exists, in the discretion of the superintendent, and may require the correction of the returns in accordance with the result of such recount. If the ballot box is found to contain more ballots than there are electors registered in such precinct or more ballots than the number of voters who voted in such precinct at such primary or election, the superintendent may, in his or her discretion, exclude the poll of that precinct, either as to all offices, candidates, questions, or parties and bodies or as to any particular offices, candidates, questions, or parties and bodies, as to which such excess exists.

(d) In precincts in which voting machines have been used, the superintendent may require a recanvass of the votes recorded on the machines used in the precinct, as provided in Code Section 21-2-495.

(e) In precincts in which paper ballots have been used, the general returns made by the poll officers from the various precincts shall be read one after another in the usual order, slowly and audibly, by one of the assistants who shall, in each case of a return from a precinct in which ballots were used, read therefrom the number of ballots issued, spoiled, canceled, and cast, respectively, whereupon the assistant having charge of the records of the superintendent showing the number of ballots furnished for each precinct, including the number of stubs and

unused ballots and spoiled and canceled ballots returned, shall publicly announce the number of the same respectively; and, unless it appears by such number or calculations therefrom that such records and such general return correspond, no further returns shall be read from the latter until all discrepancies are explained to the satisfaction of the superintendent.

(f) In precincts in which voting machines have been used, there shall be read from the general return the identifying number or other designation of each voting machine used and the numbers registered on the protective counter or device on each machine prior to the opening of the polls and immediately after the close of the same, whereupon the assistant having charge of the records of the superintendent showing the number registered on the protective counter or device of each voting machine prior to delivery at the polling place shall publicly announce the numbers so registered; and, unless it appears that such records and such general return correspond, no further returns shall be read from the latter until any and all discrepancies are explained to the satisfaction of the superintendent.

(g) In precincts in which paper ballots have been used, when the records agree with such returns regarding the number of ballots and the number of votes recorded for each candidate, such votes for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return which has been returned unsealed; and the figures announced shall be compared by other assistants with the general return which has been returned sealed. The figures announced for all precincts shall be compared by one of the assistants with the tally papers from the respective precincts. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, tally papers, and other papers in his or her possession relating to the same precinct. If the tally papers and sealed general return sheet agree, the unsealed general return shall be immediately corrected to conform thereto. In every other case the superintendent shall immediately cause the ballot box of the precinct to be opened and the vote therein to be recounted in the presence of interested candidates or their representatives; and, if the recount shall not be sufficient to correct the error, the superintendent may summon the poll officers to appear immediately with all election papers in their possession.

(h) In precincts in which voting machines have been used, when the records agree with the returns regarding the number registered on the voting machine, the votes recorded for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return sheet which has been returned unsealed; and the figures announced shall be compared by other assistants with the duplicate return sheet which has been returned sealed. If the voting machine is

of the type equipped with a mechanism for printing paper proof sheets, such general and duplicate return sheets shall also be compared with such proof sheets, which have been returned as aforesaid. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, proof sheets, and other papers in his or her possession relating to the same precinct. Such proof sheets shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and, if the proper proof sheets, properly identified, shall be mutually consistent and if the general and duplicate returns or either of such returns from such precinct shall not correspond with such proof sheets, they shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent.

(i) If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.

(j) The superintendent shall see that the votes shown by each absentee ballot are added to the return received from the precinct of the elector casting such ballot.

(j.1) The Secretary of State shall create a pilot program for the posting of digital images of the scanned paper ballots created by the voting system.

(k) As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns shall then be certified by the superintendent in the manner required by this chapter. Such returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.

(l) In such case where the results of an election contest change the returns so certified, a corrected return shall be certified and filed by the superintendent which makes such corrections as the court orders.

History.

Ga. L. 1943, p. 347, § 1; Code 1933, § 34-1504, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 29; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1992, p. 1, § 5; Ga. L. 1992, p. 56, § 1; Ga. L. 1997, p. 590, § 37; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 25; Ga. L. 2003, p. 517, § 55; Ga. L. 2008, p. 817, § 4/HB 1098; Ga. L. 2011, p. 683, § 18/SB 82; Ga. L. 2019, p. 7,

§ 40/HB 316; Ga. L. 2021, p. 14, § 41/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (a), substituted "after the close of the polls on the day of a primary" for "at or before 12:00 Noon on the day following the primary" near the beginning of the first sentence, substituted "continue until all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast on the day of the primary or election have been counted and tabulated and the results of such tabulation released to the public and, then, continuing with provisional ballots as provided in Code Sections 21-2-418 and 21-2-419 and those absentee ballots as provided in subparagraph (a)(1)(G) of Code Section 21-2-386" for "continue the same" near the end of the first sentence, and, in the second sentence, inserted a comma following "For this purpose" at the beginning, and substituted "whom" for "which" near the middle; added subsection (j.1); and, in subsection (k), substituted "Monday" for "second Friday" near the middle of the last sentence and deleted "; provided, however, that such certification date may be extended by the Secretary of State in his or her discretion if necessary to complete a precertification audit as provided in Code Section 21-2-498" following "State" at the end.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election prob-

lems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Administrative rules and regulations.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Certification of election results. — Trial court did not err in ruling that certification by a county board of elections and registration triggered the five-day filing period of O.C.G.A. § 21-2-524(a) because the five-day period of O.C.G.A. § 21-2-524(a) for filing a petition to contest the election results for a county office began to run when the county superintendent had officially consolidated and certified the returns for the particular office; because the Secretary of State only certifies election returns for federal and state offices, the sole election official specified in the Georgia Code as having responsibility for consolidation and certification of election results for other offices is the local superintendent. Broughton v. Douglas County Bd. of Elections, 286 Ga. 528, 690 S.E.2d 141, 2010 Ga. LEXIS 60 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Certification of election and primary results. — Election supervisor of county board of registrations and elections cannot certify election and primary results. 1976 Op. Att'y Gen. No. 76-73.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 365 et seq.

C.J.S.
29 C.J.S., Elections, §§ 400, 401, 405 et seq.

21-2-494. Computation and certification of write-in votes.

The superintendent, in computing the votes cast at any election, shall compute and certify only those write-in votes cast for candidates who have given proper notice of intent to be write-in candidates pursuant to Code Section 21-2-133 exactly as such names were written by the elector.

History.
Code 1933, § 34-1506, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1987, p. 417, § 9; Ga. L. 1998, p. 295, § 1.

Law reviews.
For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-1505 are included in the annotations for this Code section.

Constitutionality. — Trial court did not err in finding that O.C.G.A. § 21-2-494 was constitutional, despite an election challenger's claim that it impermissibly allowed the exclusion of votes for write-in candidates and because it did not require that voters be provided with notice that

write-in votes for unqualified candidates would not be counted, as: (1) it was undisputed that nine write-in votes were cast for individuals who were not eligible to hold office, as these people did not give proper notice of their intention of candidacy; (2) no voters were disenfranchised; (3) each voter was given the opportunity to vote for the candidate of his or her own choosing; and (4) the legislature properly exercised its power when it limited the counting of write-in votes to votes cast for qualified write-in candidates. Brodie v. Champion, 281 Ga. 105, 636 S.E.2d 511, 2006 Ga. LEXIS 833 (2006).

Persons with spelling problems. — Persons who do not spell well may take a paper with them into the voting booth which contains the correct spelling of their candidate's name and from which they may copy that name. Morris v. Fortson, 261 F. Supp. 538, 1966 U.S. Dist. LEXIS 7571 (N.D. Ga. 1966) (decided under former Code 1933, § 34-1505).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34-1505, are included in the annotations for this Code section.

Stickers, pasters, and stamps. — The use of stickers, pasters, and stamps is not permitted in casting a write-in vote in instances where voting machines or vote recorders are used. 1965-66 Op. Att'y Gen. No. 66-230 (decided under former Code 1933, § 34-1505).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 329 et seq.

C.J.S.

29 C.J.S., Elections, § 305 et seq.

ALR.

Validity of write-in vote where candidate's surname only is written in on ballot, 86 A.L.R.2d 1025.

21-2-495. Procedure for recount or recanvass of votes; losing candidate's right to a recount; rules and regulations.

(a) In precincts where paper ballots or scanning ballots have been used, the superintendent may, either of his or her own motion or upon petition of any candidate or political party, order the recount of all the ballots for a particular precinct or precincts for one or more offices in which it shall appear that a discrepancy or error, although not apparent on the face of the returns, has been made. Such recount may be held at any time prior to the certification of the consolidated returns by the superintendent and shall be conducted under the direction of the superintendent. Before making such recount, the superintendent shall give notice in writing to each candidate and to the county or municipal chairperson of each party or body affected by the recount. Each such candidate may be present in person or by representative, and each such party or body may send two representatives to be present at such recount. If upon such recount, it shall appear that the original count by the poll officers was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.

(b) In precincts where voting machines have been used, whenever it appears that there is a discrepancy in the returns recorded for any

voting machine or machines or that an error, although not apparent on the face of the returns, exists, the superintendent shall, either of his or her own motion or upon the sworn petition of three electors of any precinct, order a recanvass of the votes shown on that particular machine or machines. Such recanvass may be conducted at any time prior to the certification of the consolidated returns by the superintendent. In conducting such recanvass, the superintendent shall summon the poll officers of the precinct; and such officers, in the presence of the superintendent, shall make a record of the number of the seal upon the voting machine or machines and the number of the protective counter or other device; shall make visible the registering counters of each such machine; and, without unlocking the machine against voting, shall recanvass the vote thereon. Before making such recanvass, the superintendent shall give notice in writing to the custodian of voting machines, to each candidate, and to the county or municipal chairperson of each party or body affected by the recanvass. Each such candidate may be present in person or by representative, and each of such parties or bodies may send two representatives to be present at such recanvass. If, upon such recanvass, it shall be found that the original canvass of the returns has been correctly made from the machine and that the discrepancy still remains unaccounted for, the superintendent, with the assistance of the custodian, in the presence of the poll officers and the authorized candidates and representatives, shall unlock the voting and counting mechanism of the machine and shall proceed thoroughly to examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in returns from such machine. Each counter shall be reset at zero before it is tested, after which it shall be operated at least 100 times. After the completion of such examination and test, the custodian shall then and there prepare a statement, in writing, giving in detail the result of the examination and test; and such statement shall be witnessed by the persons present and shall be filed with the superintendent. If, upon such recanvass, it shall appear that the original canvass of the returns by the poll officers was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly; provided, however, that in the case of returns from any precinct wherein the primary or election was held by the use of a voting machine equipped with a mechanism for printing paper proof sheets, such proof sheets, if mutually consistent, shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and there shall not be considered to be any discrepancy or error in the returns from any such precinct, such as to require a recanvass of the vote, if all available proof sheets, from the voting machine used therein, identified to the satisfaction of the superintendent and shown to his or her satisfaction to have been produced from proper custody, shall be mutually consistent; and, if the general and

duplicate returns, or either of such returns from such precincts shall not correspond with such proof sheets, they and all other papers being prepared by the superintendent shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent by the weight of the evidence; and only in such case shall the vote of such precinct be recanvassed under this Code section.

(c)(1) 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 an election or who has been declared eligible for a run-off primary or election and the number of votes received by any other candidate or candidates not declared so nominated or elected or eligible for a runoff shall be not more than one-half of 1 percent of the total votes which were cast for such office therein, any such candidate or candidates receiving a sufficient number of votes so that the difference between his or her vote and that of a candidate declared nominated, elected, or eligible for a runoff is not more than one-half of 1 percent of the total votes cast, within a period of two business days following the certification of the election results, shall have the right to a recount of the votes cast, if such request is made in writing by the losing candidate. If the office sought is a federal or state office voted upon by the electors of more than one county, the request shall be made to the Secretary of State who shall direct that the recount be performed in all counties in which electors voted for such office and notify the superintendents of the several counties involved of the request. In all other cases, the request shall be made to the superintendent. The superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(2) Whenever the difference between the number of votes for approval or rejection of a constitutional amendment or binding referendum question shall be not more than one-half of 1 percent of the total votes which were cast on such amendment or question therein, within a period of two business days following the certification of the election results, the Constitutional Amendments Publication Board shall be authorized in its discretion to call for a recount of the votes cast with regard to such amendment or question. In the case of a constitutional amendment or state-wide referendum question or a question voted upon by the electors of more than one county, the board shall direct the Secretary of State to cause a recount to be performed with regard to such amendment or question in all counties

involved and notify the superintendents of the recount. In the case of questions voted upon by the electors of only one county or municipality, the board shall direct the Secretary of State to cause a recount to be conducted by the county or municipality involved and the Secretary of State shall notify the superintendent involved of the recount. Upon notification, the superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(d) Any other provision of this Code section to the contrary notwithstanding, a candidate for a federal or state office voted upon by the electors of more than one county may petition the Secretary of State for a recount or recanvass of votes, as appropriate, when it appears that a discrepancy or error, although not apparent on the face of the returns, has been made. The recount or recanvass may be ordered in the discretion of the Secretary of State in any and all counties in which electors voted for such office, and said recount or recanvass may be held at any time prior to the certification of the consolidated returns by the Secretary of State. A recount or recanvass shall be conducted by the appropriate superintendent or superintendents in the manner and pursuant to the procedures otherwise provided in this Code section for a recount or recanvass, as appropriate. The petition pursuant to this Code section shall be in writing and signed by the person or persons requesting the recount or recanvass. A petition shall set forth the discrepancies or errors and any evidence in support of the petitioner's request for a recount or recanvass and shall be verified. The Secretary of State may require the petitioner or other persons to furnish additional information concerning the apparent discrepancies or errors in the counting or canvassing of votes.

(e) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provisions of this Code section.

History.

Ga. L. 1941, p. 432, §§ 1-4, 8; Ga. L. 1962, p. 678, § 1; Code 1933, § 34-1505, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1975, p. 806, § 1; Ga. L. 1976, p. 248, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 382, § 5; Ga. L. 1986, p. 855, § 5; Ga. L. 1987, p. 34, § 1; Ga. L. 1995, p. 1027, § 11; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 24; Ga. L. 2003, p. 517, § 56; Ga. L. 2011, p. 683, § 19/SB 82; Ga. L. 2019, p. 7, § 41/HB 316.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Recanvassing or recounting votes. — No duty is imposed on a county political executive committee to recanvass or recount votes in a primary election. Kemp v. Mitchell County Democratic Executive Comm., 216 Ga. 276, 116 S.E.2d 321, 1960 Ga. LEXIS 447 (1960); Hamilton v. Smith, 216 Ga. 345, 116 S.E.2d 565, 1960 Ga. LEXIS 465 (1960).

Differences in recounting procedure for paper ballots and electronic ballots. — Trial court did not err in granting the Secretary of State, the Governor, and the Georgia State Election Board summary judgment in voters' action challenging the use of direct recording electronic equipment because tangible ballots with custodial linkage to individual voters were not an absolute requirement for every voting system; although the recount law does not specifically set out recount procedures for electronic voting systems, it does clearly recognize that recount procedures for paper ballots necessarily differ from recanvassing procedures for mechanical voting machines. Favorito v. Handel, 285 Ga. 795, 684 S.E.2d 257, 2009 Ga. LEXIS 486 (2009).

Hearing of election contest by party's executive committee. — Since the findings and report of the recount committee are final and conclusive as to all questions respecting the validity of a primary election, any subsequent attempt by the party's executive committee to entertain and hear a contest between the parties involved is an absolute nullity for want of authority to do so. Middleton v. Moody, 216 Ga. 237, 115 S.E.2d 567, 1960 Ga. LEXIS 436 (1960); Hamilton v. Smith, 216 Ga. 345, 116 S.E.2d 565, 1960 Ga. LEXIS 465 (1960).

Judicial enforcement of findings and reports of recount committee. — When the executive committee or other authority conducting and holding a primary election for the nomination of its candidates fails or refuses to adopt, promulgate, publish, and certify to the proper authorities the findings and report of a recount committee, then the candidate whose rights may be affected by the failure or refusal has a right to proceed by mandamus to enforce the findings and report, and there is jurisdiction in the superior courts of this state to hear and determine the cause, notwithstanding the political nature of the controversy. Middleton v. Moody, 216 Ga. 237, 115 S.E.2d 567, 1960 Ga. LEXIS 436 (1960).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 362, 364, 370, 373.
C.J.S.
29 C.J.S., Elections, §§ 386, 405 et seq.
ALR.
Determination of facts regarding custody of ballots since original count, as condition of recount, 71 A.L.R. 435.

Costs or reimbursement for expenses incident to election contest or recount, 106 A.L.R. 928.

Validity of runoff voting election methodology, 67 A.L.R.6th 609.

21-2-496. Preparation and filing by superintendent of four copies of consolidated return of primary; electronic filing; superintendent to furnish final copy of each ballot used for primary.

(a) Each county and municipal superintendent shall prepare four copies of the consolidated return of the primary to be certified by the superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows:

(1) One copy to be posted at the office of the election superintendent for the information of the public;

(2) One copy to be filed in the superintendent's office;

(3) One copy to be forwarded to the Secretary of State together with a copy of each precinct return, the numbered list of voters of each precinct, and the returns and the numbered list of voters for absentee electors; and

(4) One copy to be sealed and filed with the clerk of the superior court, in the case of a county election, or with the city clerk, in the case of a municipal election, as required by Code Section 21-2-500.

(b) The Secretary of State is authorized to provide a method by which the election superintendent can file the results of primaries and elections electronically. Once the Secretary of State provides such a method of filing, the election superintendent shall file a copy of the election returns electronically in the manner prescribed by the Secretary of State in addition to the filing provided in subsection (a) of this Code section. The Secretary of State is authorized to promulgate such rules and regulations as necessary to provide for such an electronic filing.

(c) Each county and municipal superintendent shall, upon certification, furnish to the Secretary of State in a manner determined by the Secretary of State a final copy of each ballot used for such primary.

History.
Ga. L. 1890-91, p. 210, § 2; Civil Code 1895, § 114; Civil Code 1910, § 128; Code 1933, § 34-3202; Code 1933, § 34-1507, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1979, p. 631, § 2; Ga. L. 1982, p. 1512, § 5; Ga. L. 1996, p. 145, § 19; Ga. L. 1998, p. 295, § 1; Ga. L. 2008, p. 817, § 5/HB 1098; Ga. L. 2012, p. 995, §§ 36, 37/SB 92.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 219 et seq.

21-2-497. Preparation and filing by superintendent of four copies of consolidated return of elections; superintendent to furnish final copy of each ballot used for election.

(a) Each county and municipal superintendent shall prepare four copies of the consolidated return of the election to be certified by the superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows:

(1) One copy to be posted at the office of the election superintendent for the information of the public;

(2) One copy to be filed and recorded as a permanent record in the minutes of the superintendent's office;

(3) One copy to be sealed and filed with the clerk of the superior court, in the case of a county election, or with the city clerk, in the case of a municipal election, as required by Code Section 21-2-500; and

(4) One copy to be returned immediately to the Secretary of State unless required as follows:

(A) In the case of election of federal and state officers, a separate return showing totals of the votes cast for each of such officers respectively shall be forwarded by the superintendent to the Secretary of State on forms furnished by the Secretary of State;

(B) In the case of referendum elections provided for by an Act of the General Assembly, the returns shall immediately be certified by the authority holding such election to the Secretary of State, along with the precinct returns and numbered list of voters for each precinct. In addition thereto, the official citation of the Act involved and the purpose of such election shall be sent to the Secretary of State at the same time. The Secretary of State shall maintain a permanent record of such certifications;

(C) In the case of elections on constitutional amendments, the returns shall be certified immediately to the Secretary of State. Upon receiving the certified returns from the various superintendents, the Secretary of State shall immediately proceed to canvass and tabulate the votes cast on such amendments and certify the results to the Governor; and

(D) In the case of election for presidential electors, a separate return shall be prepared by each superintendent and certified immediately to the Secretary of State.

(b) Each county and municipal superintendent shall, upon certification, furnish to the Secretary of State in a manner determined by the Secretary of State a final copy of each ballot used for such election.

History.

Ga. L. 1890-91, p. 210, § 2; Civil Code 1895, § 114; Civil Code 1910, § 128; Ga. L. 1918, p. 154, §§ 1, 2; Ga. L. 1921, p. 232, § 1; Code 1933, §§ 34-2201, 34-2202, 34-3202; Code 1933, § 34-1508, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 884, § 6-6; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 855, § 6; Ga. L. 1987, p. 34, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1995, p. 1027, § 12; Ga. L. 1998, p. 295, § 1; Ga. L. 2008, p. 817,

§ 6/HB 1098; Ga. L. 2012, p. 995, § 38/SB 92.

History of Section.

The language of this Code section is derived in part from the decision in McGregor v. Clark, 155 Ga. 384, 116 S.E. 823 (1923).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 372.

C.J.S.

29 C.J.S., Elections, § 417 et seq.

21-2-498. Precertification tabulation audits.

(a) As used in this Code section, the term:

(1) "Incorrect outcome" means the winner of a contest or the answer to a proposed constitutional amendment or question would be different from the results found in a manual recount of paper official ballots.

(2) "Risk limit" means the largest statistical probability that an incorrect outcome is not detected or corrected in a risk-limiting audit.

(3) "Risk-limiting audit" means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.

(b) Local election superintendents shall conduct precertification tabulation or risk-limiting audits on one contest following any election, special election, election runoff, special election runoff, primary, special primary, primary runoff, or special primary runoff with federal or state-wide contests in accordance with requirements set forth by rule or regulation of the State Election Board. Audits performed under this Code section shall be conducted by manual inspection of random samples of the paper official ballots.

(c) In conducting each audit, the local election superintendents shall:

(1) Complete the audit prior to final certification of the contest;

(2) Ensure that all types of ballots are included in the audit, whether cast in person, by absentee ballot, advance voting, provisional ballot, or otherwise;

(3) Provide a report of the unofficial final tabulated vote results for the contest to the public prior to conducting the audit;

(4) Complete the audit in public view; and

(5) Provide details of the audit to the public within 48 hours of completion.

(d) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provi-

sions of this Code section. The procedures prescribed by the State Election Board shall include security procedures to ensure that collection of validly cast ballots is complete, accurate, and trustworthy throughout the audit.

History.

Code 1981, § 21-2-498, enacted by Ga. L. 2019, p. 7, § 42/HB 316; Ga. L. 2023, p. 614, § 5/SB 129, effective July 1, 2023; Ga. L. 2023, p. 730, § 2(7)/HB 475, effective July 1, 2023.

The 2023 amendments.

The first 2023 amendment, effective July 1, 2023, substituted "means" for "is when" in paragraph (a)(1); rewrote subsection (b), which read: "As soon as possible, but no later than the November, 2020, general election, the local election superintendents shall conduct precertification tabulation audits for any federal or state general election in accordance with requirements set forth by rule or regulation of the State Election Board. Audits performed under this Code section shall be conducted by manual inspection of random samples of the paper official ballots." and deleted subsection (e), which read: "The Secretary of State shall conduct a risk-limiting audit pilot program with a risk limit of not greater than 10 percent in one or more counties by December 31, 2021. The Secretary of State shall review the results of the pilot program and, within 90 days following the election in which such pilot program is used, shall provide the members of the General Assembly with a comprehensive report, including a plan on how to implement risk-limiting audits state wide. If such risk-limiting audit is successful in achieving the specified confidence level within five business days following the election for which it was conducted, then all audits performed pursuant to this Code section shall be similarly conducted, beginning not later than November 1, 2024." The second 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "means" for "is when" in paragraph (a)(1).

Editor's notes.

This Code section formerly pertained to the Constitutional Officers Election Board. The former Code section was based on Code 1933, § 34-1509, enacted by Ga. L. 1970, p. 347, § 30, Ga. L. 1987, p. 997, § 2, Ga. L. 1994, p. 279, § 10 and was repealed by Ga. L. 1995, p. 1027, § 13, effective July 1, 1995.

Law reviews.

For article on the 2019 enactment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-499. Duty of Secretary of State as to tabulation, computation, and canvassing of votes for state and federal officers; certification of presidential electors by Governor.

(a) Upon receiving the certified returns of any election from the various superintendents, the Secretary of State shall immediately proceed to tabulate, compute, and canvass the votes cast for all candidates described in subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the electors of more than one county and shall thereupon certify and file in his or her office the tabulation thereof. In the event an error is found in the certified returns presented to the Secretary of State or in the tabulation, computation, or canvassing of votes as described in this Code section, the Secretary of State shall notify the county submitting the incorrect returns and direct

the county to correct and recertify such returns. Upon receipt by the Secretary of State of the corrected certified returns of the county, the Secretary of State shall issue a new certification of the results and shall file the same in his or her office.

(b) The Secretary of State shall also, upon receiving the certified returns for presidential electors, proceed to tabulate, compute, and canvass the votes cast for each slate of presidential electors and shall immediately lay them before the Governor. Not later than 5:00 P.M. on the seventeenth day following the date on which such election was conducted, the Secretary of State shall certify the votes cast for all candidates described in subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the electors of more than one county and shall no later than that same time lay the returns for presidential electors before the Governor. The Governor shall enumerate and ascertain the number of votes for each person so voted and shall certify the slates of presidential electors receiving the highest number of votes. The Governor shall certify the slates of presidential electors no later than 5:00 P.M. on the eighteenth day following the date on which such election was conducted. Notwithstanding the deadlines specified in this Code section, such times may be altered for just cause by an order of a judge of superior court of this state.

(c) The Secretary of State shall not count, tabulate, or publish the names of any write-in candidates for whom the notice of intention of candidacy has not been provided in compliance with Code Section 21-2-133.

History.

Code 1933, § 34-1510, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1987, p. 997, § 3; Ga. L. 1995, p. 1027, § 14; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 26; Ga. L. 2003, p. 517, § 57; Ga. L. 2012, p. 995, § 39/SB 92; Ga. L. 2019, p. 7, § 43/HB 316.

Cross references.

Duty of Secretary of State to destroy quadrennially all filed election returns of officials whose terms of office have expired, § 45-13-20(7).

Law reviews.

For note on the 2001 amendment of this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Certification of election returns. — Trial court did not err in ruling that certification by a county board of elections and registration triggered the five-day filing period of O.C.G.A. § 21-2-524(a) because the five-day period of § 21-2-524(a) for filing a petition to contest the election results for a county office began to run when the county superintendent had officially consolidated and certified the returns for the particular office; because the Secretary of State only certifies election returns for federal and state offices, the sole election official specified in the Georgia Code as having responsibility for consolidation and certification of election results for other offices is the local superintendent. Broughton v. Douglas

County Bd. of Elections, 286 Ga. 528, 690 S.E.2d 141, 2010 Ga. LEXIS 60 (2010).

Obligation of county to take additional corrective steps. — O.C.G.A. §§ 21-2-419 and 21-2-499 expressly anticipate the potential need for a county to take additional corrective steps and resubmit the county's vote tally to the Secretary of State after the Secretary's remission of the original certification with questions. Common Cause Georgia v. Kemp, 347 F. Supp. 3d 1270, 2018 U.S. Dist. LEXIS 195340 (N.D. Ga. 2018).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 372.

C.J.S.
29 C.J.S., Elections, § 417 et seq.

21-2-500. Delivery of voting materials; presentation to grand jury in certain cases; preservation and destruction; destruction of unused ballots.

(a) Immediately upon completing the returns required by this article, in the case of elections other than municipal elections, the superintendent shall deliver in sealed containers to the clerk of the superior court or, if designated by the clerk of the superior court, to the county records manager or other office or officer under the jurisdiction of a county governing authority which maintains or is responsible for records, as provided in Code Section 50-18-99, the used and void ballots and the stubs of all ballots used; one copy of the oaths of poll officers; and one copy of each numbered list of voters, tally paper, voting machine paper proof sheet, and return sheet involved in the primary or election. In addition, the superintendent shall deliver copies of the voting machine ballot labels, computer chips containing ballot tabulation programs, copies of computer records of ballot design, and similar items or an electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, and which is stored on some alternative medium such as a CD-ROM or floppy disk simultaneously with the programming of the PROM or other memory storage device. The clerk, county records manager, or the office or officer designated by the clerk shall hold such ballots and other documents under seal, unless otherwise directed by the superior court, for at least 24 months, after which time they shall be presented to the grand jury for inspection at its next meeting. Such ballots and other documents shall be preserved in the office of the clerk, county records manager, or officer designated by the clerk until the adjournment of such grand jury, and then they may be destroyed, unless otherwise provided by order of the superior court.

(b) The superintendent shall retain all unused ballots for 30 days after the election or primary and, if no challenge or contest is filed prior to or during that period that could require future use of such ballots, may thereafter destroy such unused ballots. If a challenge or contest is

filed during that period that could require the use of such ballots, they shall be retained until the final disposition of the challenge or contest and, if remaining unused, may thereafter be destroyed.

(c) Immediately upon completing the returns required by this article, the municipal superintendent shall deliver in sealed containers to the city clerk the used and void ballots and the stubs of all ballots used; one copy of the oaths of poll officers; and one copy of each numbered list of voters, tally paper, voting machine paper proof sheet, and return sheet involved in the primary or election. In addition, the municipal superintendent shall deliver copies of the voting machine ballot labels, computer chips containing ballot tabulation programs, copies of computer records of ballot design, and similar items or an electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, and which is stored on some alternative medium such as a CD-ROM or floppy disk simultaneously with the programming of the PROM or other memory storage device. Such ballots and other documents shall be preserved under seal in the office of the city clerk for at least 24 months; and then they may be destroyed unless otherwise provided by order of the mayor and council if a contest has been filed or by court order, provided that the electors list, voter's certificates, and duplicate oaths of assisted electors shall be immediately returned by the superintendent to the county registrar.

History.

Code 1933, § 34-1515, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1978, p. 1004, § 33; Ga. L. 1993, p. 1074, § 1; Ga. L. 1994, p. 1406, § 26; Ga. L. 1997, p. 590, § 38; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 29, § 6; Ga. L. 2003, p. 517, § 58; Ga. L. 2017, p. 697, § 21/HB 268.

Law reviews.

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Penal Code 1910, § 658 are included in the annotations for this Code section.

Superintendent knowingly and falsely misstating votes. — If the number of votes was knowingly and falsely misstated by a superintendent of an election, the superintendent has failed to discharge a duty imposed by law, and the superintendent was liable to be prosecuted under former Penal Code 1910, § 658. Black v. State, 36 Ga. App. 286, 136 S.E. 334, 1927 Ga. App. LEXIS 23 (1927) (decided under former Penal Code 1910, § 658).

Sealed CD-ROM containing election information not open record subject to disclosure. — Because a superior court had not ordered that its seal be lifted under O.C.G.A. § 21-2-500(a), a CD-ROM containing election information was by law prohibited or specifically exempted from being open to inspection by the general public and thus was not an open record subject to disclosure under O.C.G.A. § 50-18-70(b). Smith v. DeKalb County, 288 Ga. App. 574, 654 S.E.2d 469, 2007 Ga. App. LEXIS 1254 (2007), cert.

denied, No. S08C0596, 2008 Ga. LEXIS 291 (Ga. Mar. 10, 2008).

21-2-501. Number of votes required for election; runoff.

(a)(1) Except as otherwise provided in this Code section, no candidate shall be nominated for public office in any primary or special primary or elected to public office in any election or special election or shall take or be sworn into such elected public office unless such candidate shall have received a majority of the votes cast to fill such nomination or public office. In instances where no candidate receives a majority of the votes cast, a run-off primary, special primary runoff, run-off election, or special election runoff between the candidates receiving the two highest numbers of votes shall be held. Unless such date is postponed by a court order, such runoff shall be held on the twenty-eighth day after the day of holding the preceding general or special primary or general or special election.

(2) If any candidate eligible to be in a runoff withdraws, dies, or is found to be ineligible, the remaining candidates receiving the two highest numbers of votes shall be the candidates in the runoff.

(3) The candidate receiving the highest number of the votes cast in such run-off primary, special primary runoff, run-off election, or special election runoff to fill the nomination or public office sought shall be declared the winner.

(4) The name of a write-in candidate eligible for election in a runoff shall be printed on the election or special election run-off ballot in the independent column.

(5) The run-off primary, special primary runoff, run-off election, or special election runoff shall be a continuation of the primary, special primary, election, or special election for the particular office concerned. Only the electors who are duly registered to vote and not subsequently deemed disqualified to vote in the runoff for candidates for that particular office shall be entitled to vote therein, and only those votes cast for the persons designated as candidates in such run-off primary, special primary runoff, run-off election, or special election runoff shall be counted in the tabulation and canvass of the votes cast. No elector shall vote in a run-off primary or special primary runoff in violation of Code Section 21-2-224.

(b) For the purposes of this subsection, the word “plurality” shall mean the receiving by one candidate alone of the highest number of votes cast. If the municipal charter or ordinances of a municipality as now existing or as amended subsequent to September 1, 1968, provide that a candidate may be nominated or elected by a plurality of the votes cast to fill such nomination or public office, such provision shall prevail.

Otherwise, no municipal candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office.

(c) In instances in which no municipal candidate receives a majority of the votes cast and the municipal charter or ordinances do not provide for nomination or election by a plurality vote, a run-off primary or election shall be held between the candidates receiving the two highest numbers of votes. Such runoff shall be held on the twenty-eighth day after the day of holding the first primary or election, unless such run-off date is postponed by court order. No elector shall vote in a run-off primary in violation of Code Section 21-2-216. The run-off primary or election shall be a continuation of the first primary or election, and only those votes cast for the candidates receiving the two highest numbers of votes in the first primary or election shall be counted. No write-in votes may be cast in such a primary, run-off primary, or run-off election. If any candidate eligible to be in a runoff withdraws, dies, or is found to be ineligible, the remaining candidates receiving the two highest numbers of votes shall be the candidates in such runoff. The municipal candidate receiving the highest number of the votes cast in such run-off primary or run-off election to fill the nomination or public office sought shall be declared the winner. The municipality shall give written notice to the Secretary of State of such runoff as soon as such municipality certifies the preceding primary, special primary, election, or special election.

(d) The name of a municipal write-in candidate eligible for election in a municipal runoff shall be printed on the municipal run-off election ballot in the independent column.

(e) In all cities having a population in excess of 100,000 according to the United States decennial census of 1980 or any future such census, in order for a municipal candidate to be nominated for public office in any primary or elected to public office in any municipal election, he or she must receive a majority of the votes cast.

(f) Except for presidential electors, to be elected to public office in a general election, a candidate must receive a majority of the votes cast in an election to fill such public office. To be elected to the office of presidential electors, no slate of candidates shall be required to receive a majority of the votes cast, but that slate of candidates shall be elected to such office which receives the highest number of votes cast.

History.

Code 1933, § 34-1513, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 257, § 2; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1971, p. 602, § 3; Ga. L. 1975, p. 867, § 1; Ga. L. 1979, p. 904, § 1; Ga. L. 1981, p. 1718, § 10; Ga. L. 1983, p. 827, § 2; Ga. L. 1986, p. 855, § 7; Ga. L. 1987, p. 417, § 10; Ga. L. 1994, p. 279, § 11; Ga. L. 1994, p. 1443, § 10; Ga. L. 1996, p. 101, § 4; Ga. L. 1996, p. 145, § 20; Ga. L. 1997, p. 590, § 39; Ga. L.

1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 825, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 17; Ga. L. 2001, p. 240, § 42; Ga. L. 2003, p. 517, § 59; Ga. L. 2005, p. 253, § 63/HB 244; Ga. L. 2008, p. 817, § 7/HB 1098; Ga. L. 2010, p. 914, § 24/HB 540; Ga. L. 2014, p. 1, § 7/HB 310; Ga. L. 2017, p. 2, § 2/HB 42; Ga. L. 2021, p. 14, § 42/SB 202.

The 2021 amendment, effective March 25, 2021, in paragraph (a)(1), inserted "or shall take or be sworn into such elected public office" near the middle of the first sentence and rewrote the last sentence, which read: "Unless such date is postponed by a court order, such run-off primary, special primary runoff, run-off election, or special election runoff shall be held as provided in this subsection."; deleted former paragraphs (a)(2) through (a)(6), which read: "(2) In the case of a runoff from a general primary or a special primary or special election held in conjunction with a general primary, the runoff shall be held on the Tuesday of the ninth week following such general primary.

"(3) In the case of a runoff from a general election for a federal office or a runoff from a special primary or special election for a federal office held in conjunction with a general election, the runoff shall be held on the Tuesday of the ninth week following such general election.

"(4) In the case of a runoff from a general election for an office other than a federal office or a runoff from a special primary or special election for an office other than a federal office held in conjunction with a general election, the runoff shall be held on the twenty-eighth day after the day of holding the preceding general election.

"(5) In the case of a runoff from a special primary or special election for a federal office not held in conjunction with a general primary or general election, the runoff shall be held on the Tuesday of the ninth week following such special primary or special election.

"(6) In the case of a runoff from a special primary or special election for an office other than a federal office not held in conjunction with a general primary or general election, the runoff shall be held on the twenty-eighth day after the day of holding the preceding special primary or special election; provided, however, that, if such runoff is from a special primary or special election held in conjunction with a special primary or special election for a federal office and there is a runoff being conducted for such federal office, the runoff from the special primary or special election conducted for such other office may be held in conjunction with the runoff for the federal office.", redesignated former paragraphs (a)(7) through (a)(10) as present paragraphs (a)(2) through (a)(5), respectively; in the second sentence of paragraph (a)(5), substituted "who are" for "who were" and substituted "runoff for" for "primary, special primary, election, or special election for" in the second sentence in present paragraph (a)(5); and, in subsection (c), substituted "court order. No elector" for "court order; provided, however, that, in the case of a runoff from a municipal special election that is held in conjunction with a special election for a federal office and not in conjunction with a general primary or general election, the municipality may conduct such runoff from such municipal special election on the date of the special election runoff for the federal office. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided, however, that no elector".

Cross references.

Run-off elections, Ga. Const. 1983, Art. II, Sec. II, Para. II.

Editor's notes.

Ga. L. 1983, p. 827, § 1, not codified by the General Assembly, provided: "It is the intent of this Act to implement certain changes required by Article II, Section II, Paragraph II of the Constitution of the State of Georgia."

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of con-

fidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some coun-

ties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For note, "Who Drew Congressional District Lines: The Georgia General Assembly or the United States Department of Justice?," see 11 Ga. St. U. L. Rev. 381 (1995).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

For note, "Georgia's Runoff Election System Has Run Its Course," see 54 Ga. L. Rev. 1063 (2020).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 34-3212, 34-3213, 34A-1407 and Code Section 21-3-407 are included in the annotations for this Code section.

Constitutionality. — State run-off election for national senator on November 24 for resolving plurality deadlock was valid under O.C.G.A. § 21-2-501 as a legitimate state exercise of a "failure-to-elect" mechanism pursuant to 2 U.S.C. § 8, and did not effect an unconstitutional regulation of the timing for elections of United States Senators as mandated by 2 U.S.C. § 1, and U.S. Const., art. I, sec. IV, cl. I. Nor was the election invalid on the grounds that O.C.G.A. § 21-2-501 violates U.S. Const., art. I, sec. III, cl. III, by adding as a qualification for the office of United States Senator that a candidate receive a majority of the votes cast, as it is more accurately interpreted as a method for construing the meaning of the votes cast than as a way of describing the candidates involved in the campaign. Public Citizen, Inc. v. Miller, 813 F. Supp. 821, 1993 U.S. Dist. LEXIS 1303 (N.D. Ga.), aff'd, 992 F.2d 1548, 1993 U.S. App. LEXIS 13641 (11th Cir. 1993).

The majority vote requirement of O.C.G.A. § 21-2-501, also known as the primary runoff requirement, does not violate § 2 of the Voting Rights Act, 42 U.S.C. § 1973 (now 52 U.S.C. § 20501), or the First, Fourteenth or Fifteenth Amend-

ments to the United States Constitution-.Brooks v. Miller, 158 F.3d 1230, 1998 U.S. App. LEXIS 27881 (11th Cir. 1998), cert. denied, 526 U.S. 1131, 119 S. Ct. 1805, 143 L. Ed. 2d 1008, 1999 U.S. LEXIS 3470 (1999).

Concept of political equality in the voting booth extends to all phases of state elections. Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821, 1963 U.S. LEXIS 1944 (1963) (decided under former Code 1933, §§ 34-3212 and 34-3213).

All participants have equal vote. — Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote. Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821, 1963 U.S. LEXIS 1944 (1963) (decided under former Code 1933, §§ 34-3212 and 34-3213).

Impact of HB 310. — Given that Ga. L. 2014, p. 1 (HB 310) encompassed comprehensive electoral reforms, and was not merely a legislative fix for the violation of the 45-day transmittal requirement of 42 U.S.C. § 1973ff-1(a)(8)(A) (now 52 U.S.C. § 20302), the court could not conclude that the Georgia legislature would go back to the old electoral system if the state's appeal were dismissed as moot. United States v. Georgia, 778 F.3d 1202, 2015 U.S. App. LEXIS 2823 (11th Cir. 2015).

Candidate is elected by plurality of votes cast if municipal charter or ordinance so provides. Barrett v. City of Perry, 229 Ga. 267, 191 S.E.2d 74, 1972 Ga. LEXIS 578 (1972) (decided under former Code Section 1933, § 34A-1407).

OPINIONS OF THE ATTORNEY GENERAL

Elections for probate judges are by majority and not plurality vote. 1983 Op. Att'y Gen. No. U83-16.

Offices requiring majority vote. — The Secretary of State, Attorney General, State School Superintendent, Commissioner of Agriculture, and Commissioner of Labor must be elected by a majority vote. 1997 Op. Att'y Gen. No. U97-20.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, §§ 375, 380.

C.J.S.

29 C.J.S., Elections, §§ 208 et seq., 421 et seq.

ALR.

Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters, 131 A.L.R. 1382.

Result of election as affected by votes cast for deceased or disqualified person, 133 A.L.R. 319.

Construction and application of Elections Clause of United States Constitution, U.S. Const. Art. I, § 4, cl.1, and state constitutional provisions concerning congressional elections, 34 A.L.R.6th 643.

21-2-501.1. [Repealed] Timing whenever a municipal general primary is held in conjunction with the general primary in even-numbered years.

History.

Code 1981, § 21-2-501.1, enacted by Ga. L. 1998, p. 295, § 1; repealed by Ga. L. 2012, p. 995, § 40/SB 92, effective July 1, 2012.

21-2-502. Issuance of certificates of election and commission; Governor's proclamation as to constitutional amendments.

(a) **Governor and other constitutional officers.** Upon completing the tabulation of any election for Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, or Commissioner of Labor, the Secretary of State shall lay the same before the Governor upon his or her oath of office as Governor; and the Governor, upon the other constitutional officers taking their oaths of office, shall issue a commission under the great seal of the State of Georgia signed by the Governor and countersigned by the Secretary of State, to each such person. The Secretary of State shall issue the commission to the person elected Governor.

(b) **United States senators; representatives in Congress; members of the General Assembly.**

(1) Upon completing the tabulation of any election for United States senator or representative in Congress, the Secretary of State shall lay the same before the Governor, who shall immediately issue certificates of election and commissions under the seal of the state, duly signed by the Governor and attested by the Secretary of State and deliver the same to the candidates receiving the required number of votes to be elected to the respective offices.

(2) The Secretary of State shall issue certificates of election to the persons elected members of the Senate and the House of Representatives of the General Assembly and, between the hours of 12:00 Noon and 1:00 P.M. on the second Monday in January of each odd-numbered year, present before the Senate and the House of Representatives the several returns of the elections of members of the respective houses. In case of a special election the Secretary of State shall issue a certificate of election to each person so elected, and the Secretary of State shall present the returns of such election to the proper house as soon as received and tabulated by the Secretary of State. Immediately upon their taking the oath of office, each member of the Senate and the House of Representatives shall be issued a commission under the great seal of the State of Georgia, signed by the Secretary of State.

(c) **Justices of the Supreme Court, Judges of the Court of Appeals, Commissioners of the Georgia Public Service Commission, judges of the superior court, judges of the juvenile court, and district attorneys.** Upon completion of the tabulation the Secretary of State shall certify the result of each election of Justices of the Supreme Court, of Judges of the Court of Appeals, of Commission-

ers of the Georgia Public Service Commission, of judges of the superior court, of judges of the juvenile court where elected, and of district attorneys to the Governor and shall issue a certificate of election to each person so elected. The Governor shall, upon each such person taking the oath of office, immediately issue a commission under the great seal of the State of Georgia, signed by the Governor and countersigned by the Secretary of State, to each such person.

(d) **County officers.** The superintendent in each county shall, as soon as the returns have been properly certified, issue certificates of election to the successful candidates for all county officers to be filled by the votes of electors of such county. Immediately upon taking the oath of office, each such county officer shall be issued a commission under the seal of the executive department, signed by the Governor and countersigned by one of his or her secretaries.

(e) **Presidential electors.** The Secretary of State, on receiving and computing the returns of presidential electors, shall lay them before the Governor, who shall enumerate and ascertain the number of votes for each person so voted for and shall cause a certificate of election to be delivered to each person so chosen.

(f) **Constitutional amendments.** Upon receiving the certified results of elections on all constitutional amendments from the Secretary of State, the Governor shall issue his or her proclamation declaring the results of the vote of each amendment.

History.

Orig. Code 1863, § 1252; Code 1868, § 1333; Code 1873, § 1312; Ga. L. 1880-81, p. 67, § 1; Code 1882, § 1312; Ga. L. 1888, p. 33, § 1; Civil Code 1895, § 90; Civil Code 1910, § 104; Code 1933, § 34-2502; Ga. L. 1958, p. 208, § 7; Code 1933, § 34-1511, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1983, p. 884, § 6-7; Ga. L. 1984, p. 565, § 2; Ga. L. 1985, p. 206, § 1; Ga. L. 1986, p. 32, § 1; Ga. L. 1994, p. 279, § 12; Ga. L. 1995, p. 1027, § 15; Ga. L. 1998, p. 295, § 1.

Editor's notes.

Ga. L. 1984, p. 565, § 4, not codified by the General Assembly, provided that that Act would apply to judges of the juvenile court elected or appointed after July 1, 1984.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 372.

C.J.S.

29 C.J.S., Elections, § 417 et seq.

ALR.

Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters, 131 A.L.R. 1382.

21-2-503. Issuance of commission to person whose election is contested; procedure upon finding that person to whom commission was issued was not legally elected; swearing into office of person whose election is contested.

(a) A commission which is to be issued, as provided for by this chapter, to any person elected to any office shall be issued notwithstanding the fact that the election of such person to any such office may be contested in the manner provided by this chapter. Whenever it shall appear, by the final judgment of the proper tribunal having jurisdiction of a contested election, that the person to whom such commission shall have been issued has not been elected legally to the office for which he or she has been commissioned, then a commission shall be issued to the person who shall appear to be elected legally to such office. The issuing of such commission shall nullify the commission already issued; and all power and authority first issued under such commission shall thereupon cease.

(b) Upon the certification of the results of the election, a person elected to a municipal office may be sworn into office notwithstanding that the election of such person may be contested in the manner provided by this chapter. Upon the final judgment of the proper tribunal having jurisdiction of a contested election which orders a second election or declares that another person was legally elected to the office, the person sworn into municipal office shall cease to hold the office and shall cease to exercise the powers, duties, and privileges of the office immediately.

(c) Upon the certification of the results of the election, a person elected to a federal, state, or county office may be sworn into office notwithstanding that the election of such person may be contested in the manner provided by this chapter. Upon the final judgment of the proper tribunal having jurisdiction of a contested election which orders a second election or declares that another person was legally elected to the office, the person sworn into such office shall cease to hold the office and shall cease to exercise the powers, duties, and privileges of the office immediately.

History.

Ga. L. 1893, p. 124, § 1; Civil Code 1895, § 107; Ga. L. 1898, p. 44, § 1; Civil Code 1910, § 121; Code 1933, § 34-2801; Code 1933, § 34-1512, enacted by Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1993, p. 118, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 20/SB 82.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 381 et seq., 438.

C.J.S.
29 C.J.S., Elections, §§ 427 et seq., 542 et seq.

21-2-504. Special primary or election upon failure to nominate or elect or upon death, withdrawal, or failure of officer-elect to qualify.

(a) Whenever any primary or election shall fail to fill a particular nomination or office and such failure cannot be cured by a run-off primary or election, whenever any person elected to public office shall die or withdraw prior to taking office, or whenever any person elected to public office shall fail to take that office validly, the authority with whom the candidates for such nomination or office file notice of candidacy shall call a special primary or election to fill such position. If a special primary will not be held and unless otherwise provided by law, the call of a special election shall be made within 45 days after the occurrence of the vacancy.

(b) Whenever any person elected to municipal public office shall, after taking office, die, withdraw, or for any other reason create a vacancy in his or her office and the municipal charter fails to provide a method for the filling of such vacancy, the governing authority shall thereupon call a special election to fill such vacancy.

History.
Code 1933, § 34-1514, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1980, p. 685, § 1; Ga. L. 1984, p. 1, § 13; Ga. L. 1998, p. 295, § 1.

Cross references.
Special elections and primaries generally, § 21-2-540 et seq.

Administrative rules and regulations.
Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, § 183-1-8-.01.

JUDICIAL DECISIONS

O.C.G.A. § 21-2-504(a) codifies common-law rule requiring the calling of a new election when the winner of an election is ineligible to assume office. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Intent. — By the enactment of O.C.G.A. § 21-2-504, the General Assembly intended to allow the electorate to fill an elective term which would be vacant from its inception. By specifying death and withdrawal as events which trigger the special election requirement, the General Assembly indicated the full reach of its intention by providing for a new election when either involuntary or voluntary actions created such a vacancy. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

State encroachment on right to vote. — To survive strict judicial scrutiny, any state encroachment on the right to vote must be justified by a compelling state interest. Duncan v. Poythress, 515 F.

Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Manner of filling vacancies before and during term distinguished. — When a vacancy occurs during the term of office of a Justice of the Supreme Court of Georgia, the seat is filled by executive appointment, but when the vacancy occurs after a general election and prior to the commencement of the term, the seat is filled by a special election called for that purpose. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

Subsection (a) applicable to resignations. — Although subsection (a) specifies only death and withdrawal as events which trigger a special election, it seems clear that the General Assembly meant, by withdrawal, any voluntary vacating of the position to which one had been elected and the ordinary, logical means by which an incumbent voluntarily leaves office is by resignation. Therefore, if subsection (a) is to serve its intended purpose, its language must be construed to encompass resignations. Duncan v. Poythress, 515 F. Supp. 327, 1981 U.S. Dist. LEXIS 13950 (N.D. Ga.), aff'd, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

The term "withdraw" in O.C.G.A. § 21-2-504 must be read to encompass resignations. Only then will it effectuate the legislative purpose of allowing the people of this state to fill vacancies which occur in elective offices either voluntarily (by withdrawal) or involuntarily (by death) before an elected official assumes office. Duncan v. Poythress, 657 F.2d 691, 1981 U.S. App. LEXIS 17330 (5th Cir. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-1515 are included in the annotations for this Code section.

If no one elected in special election, offices filled by runoff election. — If no one is elected in a special election, the offices of justice of the peace (now magistrate) and constable must be filled by a runoff election rather than by appointment. 1969 Op. Att'y Gen. No. 69-59 (decided under former Code 1933, § 34-1515).

Eligible candidate may offer for two offices. — A candidate, otherwise eligible as a runoff candidate, may offer for both the office of justice of the peace (now magistrate) and the office of constable in a runoff election. 1969 Op. Att'y Gen. No. 69-209.

Special election proper to fill office where elected person withdraws. — A special election is the proper procedure to fill the office of district attorney in the event the person elected to the office in the general election has withdrawn. 1976 Op. Att'y Gen. No. 76-120.

Write-in candidate failing to provide prior notice of candidacy. — A vacancy in an office which results from a determination that the election for that office failed because of a failure to comply with the constitutional requirement that a write-in candidate publish and provide prior notice of candidacy is filled by a special election. 1976 Op. Att'y Gen. No. 76-56.

Individual receiving no votes in general primary. — This section did not permit a special primary to be called a nomination for which only one individual qualified where the individual received no votes in the general primary. 1978 Op. Att'y Gen. No. 78-60.

Right to vote in special primary or election. — If a special primary or election is called, voters who did not register or vote previously in the regular primary are still entitled to vote in the special primary or election provided they register to vote on the fifth day after the call of such special primary or election. 1982 Op. Att'y Gen. No. 82-53.

If a special primary is held for the United States House of Representatives, a person is not bound to vote in the same political party's primary in which the person voted previously in the regular primary. 1982 Op. Att'y Gen. No. 82-53.

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 1.
C.J.S.
29 C.J.S., Elections, § 181.
ALR.
Death or disability of one elected to office before qualifying as creating a vacancy, 74 A.L.R. 486.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

ARTICLE 13

CONTESTED ELECTIONS AND PRIMARIES

Law reviews.
For note, "Georgia Election Contest Procedures," see 22 Ga. St. B. J. 44 (1985).

JUDICIAL DECISIONS

Georgia Election Code provides liberal rules for the contesting of elections and strict penalties for violations. Hollifield v. Vickers, 118 Ga. App. 229, 162 S.E.2d 905, 1968 Ga. App. LEXIS 1361 (1968).

State courts have jurisdiction to recount ballots cast in congressional contests. — The courts of this state have jurisdiction of a proceeding brought under the provisions of the Georgia Election Code to obtain a recount of all or a portion of the ballots cast in an election for a representative to either house in the Congress. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

To cast doubt on an election it is only necessary to show: (1) electors voted in the particular contest being challenged; and (2) a sufficient number of them were not qualified to vote so as to cast doubt on the election. Taggart v. Phillips, 242 Ga. 454, 249 S.E.2d 245, 1978 Ga. LEXIS 1249 (1978).

Contest moot. — A challenge to primary election results by an unsuccessful candidate was moot and subject to dismissal where the candidate did not seek to advance case so that the candidate's challenge was docketed and considered before the general election. Payne v. Chatman, 267 Ga. 873, 485 S.E.2d 723; Caplan v. Hattaway, 269 Ga. 582, 501 S.E.2d 195.

RESEARCH REFERENCES

ALR.
Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast, 155 A.L.R. 677.

Admissibility of parol evidence of election officials to impeach election returns, 46 A.L.R.2d 1385.

21-2-520. Definitions.

As used in this article, the term:

(1) "Contestant" means any person or persons entitled under Code Section 21-2-521 to contest the result of any primary or election.

(2) "Defendant" means:

(A) The person whose nomination or election is contested;

(B) The person or persons whose eligibility to seek any nomination or office in a run-off primary or election is contested;

(C) The election superintendent or superintendents who conducted the contested primary or election; or

(D) The public officer who formally declared the number of votes for and against any question submitted to electors at an election.

History.
Code 1933, § 34-1701, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1987, p. 1050, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Failure to name Board of Registration and Elections as a party. — In an election contest, the trial court did not err in denying an incumbent's motion to dismiss a challenger's lawsuit merely because that challenger failed to name the Board of Registration and Elections as the proper party defendant, as the failure to name the proper parties was an amendable defect, correctable by the parties or upon the court's own motion. Brodie v. Champion, 281 Ga. 105, 636 S.E.2d 511, 2006 Ga. LEXIS 833 (2006).

Equitable remedy could not be greater than if rights not violated by referendum vote. — Equitable relief sought by the petitioners was denied because if the trial court had not erred, the referendum still would have passed and the petitioners would be part of the city; thus, the petitioners were asking the court to put them in a better position than they would be in if their rights had not been violated. Harris v. City of S. Fulton, 358 Ga. App. 788, 856 S.E.2d 361, 2021 Ga. App. LEXIS 132 (2021).

21-2-521. Primaries and elections which are subject to contest; persons who may bring contest.

The nomination of any person who is declared nominated at a primary as a candidate for any federal, state, county, or municipal office; the election of any person who is declared elected to any such office (except when otherwise prescribed by the federal Constitution or the Constitution of Georgia); the eligibility of any person declared eligible to seek any such nomination or office in a run-off primary or election; or the approval or disapproval of any question submitted to electors at an election may be contested by any person who was a candidate at such primary or election for such nomination or office, or by any aggrieved elector who was entitled to vote for such person or for or against such question.

History.
Code 1933, § 34-1702, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 17; Ga. L. 1998, p. 295, § 1.

Law reviews.
For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).
For article, "The Civil Jurisdiction of

State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34A-1501 and Code Section 21-3-421 are included in the annotations for this Code section.

This section related merely to procedural matters of appeal and not to the substantive right to a jury trial once the appeal has been perfected. Bell v. Cronic, 248 Ga. 457, 283 S.E.2d 476, 1981 Ga. LEXIS 1026 (1981) (decided under former Code 1933, § 34A-1501).

Effect of filing in wrong court. — Filing an independent suit, rather than a notice of appeal, in the lower tribunal was sufficient to vest the superior court with jurisdiction to decide the appeal from the adverse decision of the mayor and city council, and the superior court was bound to make the determination whether the procedural irregularity caused unreasonable or inexcusable delay. Hanson v. Wilson, 257 Ga. 5, 354 S.E.2d 126, 1987 Ga. LEXIS 699 (1987).

Notice of contest to state election board. — Former Code 1933, § 34-203(d) (see now O.C.G.A. § 21-2-32(g)), requiring a copy of the proceeding in any action contesting an election or primary, except those instituted by the state election board, to be served on the board by mailing the copy to the chairman by certified or registered mail, is made applicable to municipal elections by the provisions contained in former Code 1933, § 34A-110 (formerly § 21-3-7). Collins v. Williams, 237 Ga. 576, 229 S.E.2d 388, 1976 Ga. LEXIS 1307 (1976); Lyde v. City of Brunswick, 241 Ga. 554, 246 S.E.2d 673, 1978 Ga. LEXIS 1042 (1978).

Time limit as to appeals. — The failure of a contestant to meet the statutory requirement of filing an appeal to the superior court within 10 days from the town's rejection of the contestant's protest requires dismissal of the appeal. Nevels v. City of Sale City, 128 Ga. App. 57, 195 S.E.2d 657, 1973 Ga. App. LEXIS 1384 (1973).

Only candidates have standing to contest election results. — Where the election is between or among candidates for a public office, it is only one or more of those candidates that have standing to file a petition to contest the results of the election. A mere citizen-voter who was not a candidate in the election does not have standing. Campbell v. Carroll, 233 Ga. 87, 209 S.E.2d 624, 1974 Ga. LEXIS 686 (1974).

This section only provides a means for contesting the result of a completed election. Committee for New Cobb County Revenue v. Brown, 228 Ga. 364, 185 S.E.2d 534, 1971 Ga. LEXIS 567 (1971).

Person having felony convictions not "aggrieved elector". — A person who has felony convictions for burglary and receiving stolen goods is not eligible to vote and is thus not an "aggrieved elector" able to contest an election. Mathews v. Gibbs, 238 Ga. 680, 235 S.E.2d 3, 1977 Ga. LEXIS 1162 (1977).

Mandamus action to compel probate judge to verify signatures. — Where plaintiffs filed a mandamus action to force the probate judge to properly verify the signatures on a recall petition and notwithstanding a reference to O.C.G.A. § 21-2-521 regarding the contesting of results of primaries or elections and the inclusion of prayers for equitable relief, the complaint stated a claim under O.C.G.A. § 21-4-17, and its dismissal was error. Howell v. Tidwell, 256 Ga. 647, 352 S.E.2d 372, 1987 Ga. LEXIS 560 (1987).

Election challenger's timely filed election contest, filed after the election, was erroneously dismissed, as such was not moot merely because the challenger failed to file the contest prior to the election, given that no statutory provision or case law supported this proposition, and the petition sufficiently stated a

claim upon which relief could be granted. Allen v. Yost, 281 Ga. 102, 636 S.E.2d 517, 2006 Ga. LEXIS 836 (2006).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 403 et seq.
C.J.S.
29 C.J.S., Elections, §§ 441, 460 et seq.
ALR.
Effect of irregularities or defects in primary petitions — State cases, 14 A.L.R.6th 543.

21-2-522. Grounds for contest.

A result of a primary or election may be contested on one or more of the following grounds:

(1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;

(2) When the defendant is ineligible for the nomination or office in dispute;

(3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;

(4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or

(5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

History.
Code 1933, § 34-1703, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1986, p. 772, § 6; Ga. L. 1993, p. 617, § 10; Ga. L. 1995, p. 1027, § 16; Ga. L. 1998, p. 295, § 1; Ga. L. 2008, p. 261, § 1/SB 456.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 34-3101 and former Code Section 21-3-422 are included in the annotations for this Code section.

Construction. — The Georgia Election Code provides liberal rules for the contesting of elections and strict penalties for violations. Laite v. Stewart, 112 Ga. App. 853, 146 S.E.2d 553, 1965 Ga. App. LEXIS 852 (1965).

Former Code 1933, § 34-1703 (see now O.C.G.A. § 21-2-522) only provides a means for contesting the result of a completed election. Committee for New Cobb County Revenue v. Brown, 228 Ga. 364, 185 S.E.2d 534, 1971 Ga. LEXIS 567 (1971).

Failure to place a candidate's nickname on the ballot could not be considered an act of misconduct within the meaning of O.C.G.A. § 21-2-522(1). Maye v. Pundt, 267 Ga. 243, 477 S.E.2d 119.

Even assuming that a candidate had a right to have a nickname placed on the ballot and that failure to do so constituted an act of misconduct, the candidate failed to carry the candidate's burden to show that failure to do so changed or placed in doubt the result of the election. Maye v. Pundt, 267 Ga. 243, 477 S.E.2d 119.

Required showing. — A party seeking to contest an election on the grounds that legal voters were improperly turned away at the polls need not establish how rejected voters would have voted; the party need only establish that sufficient legal votes were rejected to change or place in doubt the result. Whittington v. Mathis, 253 Ga. 653, 324 S.E.2d 727, 1985 Ga. LEXIS 511 (1985).

An unsuccessful candidate for city council, who contested the election under former § 21-2-422(1), failed to show that the alleged misconduct impacted on the number of voters necessary for the candidate to carry the candidate's burden of showing that the alleged misconduct was sufficient to change or place in doubt the result of the election. Johnson v. Collins, 260 Ga. 152, 260 Ga. 159, 391 S.E.2d 113, 1990 Ga. LEXIS 175 (1990) (decided under former § 21-3-422).

Election challenger's timely filed election contest, filed after the election, was erroneously dismissed, as such was not moot merely because the challenger failed to file the contest prior to the election, given that no statutory provision or case law supported this proposition, and the petition sufficiently stated a claim upon which relief could be granted. Allen v. Yost, 281 Ga. 102, 636 S.E.2d 517, 2006 Ga. LEXIS 836 (2006).

Evidence sufficient to show doubt as to validity of election results. — See Stuckey v. Storms, 265 Ga. 491, 458 S.E.2d 344, 1995 Ga. LEXIS 516 (1995).

Because the trial court's finding that four voters in a local election were improperly disenfranchised was not clearly erroneous, and the wrongful rejection of those votes was sufficient to place the results of the election in doubt pursuant to O.C.G.A. § 21-2-522(3), the trial court's act of ordering a new election was upheld on appeal. McIntosh County Bd. of Elections v. Deverger, 282 Ga. 566, 651 S.E.2d 671, 2007 Ga. LEXIS 605 (2007).

Election returns carry a presumption of validity. Johnson v. Rheney, 245 Ga. 316, 264 S.E.2d 872, 1980 Ga. LEXIS 779 (1980); Walls v. Garrett, 247 Ga. 640, 277 S.E.2d 903, 1981 Ga. LEXIS 783 (1981).

In the absence of proof to the contrary, elections held under legally constituted authority are presumed to be regular and valid. Lowe v. Weltner, 118 Ga. App. 635, 164 S.E.2d 919, 1968 Ga. App. LEXIS 1483 (1968), cert. denied, 396 U.S. 820, 90 S. Ct. 58, 24 L. Ed. 2d 70, 1969 U.S. LEXIS 861 (1969).

Burden of establishing irregularity or illegality sufficient to change or place in doubt the election result is on the party contesting the election. Walls v. Garrett, 247 Ga. 640, 277 S.E.2d 903, 1981 Ga. LEXIS 783 (1981).

Trial court properly invalidated the primary election and ordered that a new election be held since plaintiff candidate satisfied the burden under O.C.G.A. § 21-2-522(1) by affirmatively showing that a sufficient number of votes were irregularly recorded to make a difference or cast doubt on the outcome. Howell v. Fears, 275 Ga. 627, 571 S.E.2d 392, 2002 Ga. LEXIS 929 (2002).

In an election contest under O.C.G.A. § 21-2-522 regarding a race for lieutenant governor, the small number of irregularities involved with the direct-recording electronic (DRE) voting system and the lack of evidence of misconduct by any election official was insufficient to overcome the winner's margin of victory of 123,172 votes. Further, the trial court did not err in limiting discovery of the DRE machines or in denying the challengers' motion for a continuance and jury trial demand. Martin v. Fulton County Bd. of Registration & Elections, 307 Ga. 193, 835 S.E.2d 245, 2019 Ga. LEXIS 724 (2019).

Required showing. — Under former Code 1933, § 34-1703 (see now O.C.G.A. § 21-2-522), the contestant must show that a sufficient number of electors voted illegally or were irregularly recorded in the contest being challenged to change or cast doubt on the election. Walls v. Garrett, 247 Ga. 640, 277 S.E.2d 903, 1981 Ga. LEXIS 783 (1981).

Failure to give required oaths to voters receiving assistance along with other irregularities were sufficient to cast doubt on the results of an election. McCranie v. Mullis, 267 Ga. 416, 478 S.E.2d 377.

Three votes sufficient to cast doubt on election result. — A difference of three votes is enough to cast the results of

an election in doubt and is a sufficient ground to contest the election. Bell v. Cronic, 248 Ga. 457, 283 S.E.2d 476, 1981 Ga. LEXIS 1026 (1981).

Consideration of consequences of misconduct. — The authority of courts to declare an election void regardless of the consequences of the misconduct or irregularities claimed no longer exists. Laite v. Stewart, 112 Ga. App. 853, 146 S.E.2d 553, 1965 Ga. App. LEXIS 852 (1965).

Effect of harmless irregularities. — Where election is fairly and honestly conducted, it will not be invalidated by mere irregularities which are not shown to have affected the result. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173, 1957 Ga. App. LEXIS 647 (1957).

Not necessary to determine vote denial allegation where different result not contended. — Where it was not contended that the result of the election would have been different, it was unnecessary to determine whether an unspecified number of persons, whose names did not appear on the voter's list for the last general election, were properly or improperly denied the right to vote in an election held for the purpose of authorizing a bond issue within a county school district. Pinion v. Walker County Sch. Dist., 203 Ga. 99, 45 S.E.2d 405, 1947 Ga. LEXIS 562 (1947).

Equitable remedy could not be greater than if rights not violated by referendum vote. — Equitable relief sought by the petitioners was denied because if the trial court had not erred, the referendum still would have passed and the petitioners would be part of the city; thus, the petitioners were asking the court to put them in a better position than they would be in if their rights had not been violated. Harris v. City of S. Fulton, 358 Ga. App. 788, 856 S.E.2d 361, 2021 Ga. App. LEXIS 132 (2021).

Exclusion of an ineligible nominee will not change the result of an election or cast doubt upon its outcome so that an election contest predicated on such exclusion can be maintained. Tripp v. Holder, 119 Ga. App. 608, 168 S.E.2d 189, 1969 Ga. App. LEXIS 1184 (1969).

Objections to irregularities in the nomination of a candidate should be taken prior to election and it is too late to object after the nominee's name has been placed on the ballot and the nominee has been elected to office. Tate v. Morley, 223 Ga. 36, 153 S.E.2d 437, 1967 Ga. LEXIS 404 (1967).

Illegal votes ground for contesting municipal election. — Although the Georgia Election Code was not applicable by its terms to municipal elections under former Code 1933, § 34-102 (see now O.C.G.A. § 21-2-15), in the absence of any statutory grounds for contest in the former Municipal Code, the ground for contest in former Code 1933, § 34-102(c) (see now O.C.G.A. § 21-2-15) was a good ground of contest in a municipal election. Davidson v. Bryan, 242 Ga. 282, 248 S.E.2d 657, 1978 Ga. LEXIS 1171 (1978).

Illegally issued absentee ballots need not be considered illegal votes as such because the ballot itself is still the expressed will of the elector. Johnson v. Rheney, 245 Ga. 316, 264 S.E.2d 872, 1980 Ga. LEXIS 779 (1980).

Elector moving to new district within county. — An elector who moves residence to a new election district within the same county within 30 days prior to a primary or election may not vote in the election district in which the elector was formerly registered to vote, but should notify the board of registrars, so as to have the elector's name appear on the proper list of electors. Taggart v. Phillips, 242 Ga. 484, 249 S.E.2d 268, 1978 Ga. LEXIS 1261 (1978).

Showing that illegal votes affected outcome required. — To change or place in doubt the result of an election, it must be affirmatively shown that enough illegal votes were cast for the candidates involved so as to make a difference in the outcome. Miller v. Kilpatrick, 140 Ga. App. 193, 230 S.E.2d 328, 1976 Ga. App. LEXIS 1400 (1976).

It must be shown that a sufficient number of electors voted illegally or were irregularly recorded in the contest being challenged to change or cast doubt on the election. Taggart v. Phillips, 242 Ga. 484, 249 S.E.2d 268, 1978 Ga. LEXIS 1261 (1978).

No estoppel against contestant unless participant in illegality. — Generally, unless the person contesting an elec-

tion participated in the illegality alleged, the person is not estopped to prove the illegality. Davidson v. Bryan, 242 Ga. 282, 248 S.E.2d 657, 1978 Ga. LEXIS 1171 (1978).

Pre-election challenge not required. — There is no statutory provision requiring a candidate to challenge illegal registrants before the election. Davidson v. Bryan, 242 Ga. 282, 248 S.E.2d 657, 1978 Ga. LEXIS 1171 (1978).

Mandatory nature of election law when pre-election enforcement sought. — All provisions of the election law are mandatory if enforcement is sought before election in a direct proceeding for that purpose; but after the election all should be held directory only, in support of the result, unless of a character to effect an obstruction to the free and intelligent casting of the vote, or the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by statute that the particular act is essential to the validity of an election, or that its omission shall render it void. Miles v. State, 96 Ga. App. 610, 101 S.E.2d 173, 1957 Ga. App. LEXIS 647 (1957) (decided under former Code 1933, § 34-3101).

Petition to contest properly denied. — Trial court properly denied a losing candidate's petition to contest the election results of a mayoral election held in a town as the losing candidate failed to meet the burden of establishing that any misconduct, fraud, or irregularity occurred that placed the result of the election in doubt based on the county clerk signing the document reflecting the election results, instead of the election superintendent, and the clerk's failure to purge the voters list, which was not an obligation of the election supervisor anyway. The omission of the statutory language providing directions on how to cast a vote likewise did not necessitate a new election since the poll manager testified that the poll manager and other poll workers instructed each voter how to fill out the ballot and established that there was no concern or confusion by the voters regarding the ballot. Lewis v. O'Day, 284 Ga. 423, 667 S.E.2d 594, 2008 Ga. LEXIS 820 (2008).

In an election contest because the contestor did not present any evidence showing a factual basis to establish fraud by casting doubt on the counting of a single vote, but instead presented web site information, which had nothing to do with any miscounting of votes or the mishandling of any absentee ballots, such evidence was insufficient to support an election contest. Davis v. Dunn, 286 Ga. 582, 690 S.E.2d 389, 2010 Ga. LEXIS 175 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 34A-1501 and former Code Section 21-3-422 are included in the annotations for this Code section.

Requirements for invalidating election. — The governing authority of a municipality may not declare an election void unless a proper petition contesting the election has been filed and a hearing has been conducted at which sufficient evidence to void the election has been produced. 1985 Op. Att'y Gen. No. 85-17 (decided under former § 21-3-422).

Recognition of prior valid acts. — Municipality may treat election ordered as result of failure of prior election as a continuation of that prior election, recognizing those acts validly conducted. 1976 Op. Att'y Gen. No. 76-23 (decided under former Code 1933, § 34A-1501).

Determination of candidate's qualifications. — It is not the responsibility of a judge of the probate court, or a county board of elections, to determine the qualifications of a candidate in a general or special election, nor does the Georgia Election Code grant authority to either a judge of the probate court or a county board of elections to make a factual determination as to the eligibility of a potential candidate. 1976 Op. Att'y Gen. No. 76-90.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 389, 390.
C.J.S.
29 C.J.S., Elections, § 435 et seq.
ALR.
Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast, 155 A.L.R. 677.

Effect of irregularities or defects in primary petitions — State cases, 14 A.L.R.6th 543.

21-2-522.1. Rebuttable presumption of legal vote in contested election.

Notwithstanding any other provisions of this chapter, for the purposes of election contests, a vote cast by a person who has been listed on the official list of electors for a period of ten years or longer shall be rebuttably presumed to be a legal vote despite an unsigned voter registration card, so long as that person continues to meet the eligibility requirements of Code Section 21-2-216. For such a voter, there shall be a rebuttable presumption that the voter has taken the oath and that the voter registration card is a replacement of the original voter registration card.

History.
Code 1981, § 21-2-522.1, enacted by Ga. L. 1995, p. 1027, § 16A; Ga. L. 1998, p. 295, § 1.

Law reviews.
For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Evidence sufficient to show doubt as to validity of election results. — Because the trial court's finding that four voters in a local election were improperly disenfranchised was not clearly erroneous, and the wrongful rejection of those votes was sufficient to place the results of the election in doubt pursuant to O.C.G.A. § 21-2-522(3), the trial court's act of ordering a new election was upheld on appeal. McIntosh County Bd. of Elections v. Deverger, 282 Ga. 566, 651 S.E.2d 671, 2007 Ga. LEXIS 605 (2007).

Evidence insufficient to show doubt as to validity of election results. — Two candidates who lost city council races by 126 and 133 votes failed to produce evidence placing the results of the election in doubt based on a malfunctioning machine that produced 60 additional votes prior to recertification of the results and 21 absentee ballots alleged to have been improperly counted. Scoggins v. Collins, 288 Ga. 26, 701 S.E.2d 134, 2010 Ga. LEXIS 614 (2010), overruled in part, Parham v. Stewart, 308 Ga. 170, 839 S.E.2d 605, 2020 Ga. LEXIS 128 (2020).

21-2-523. Jurisdiction and pretrial procedures; notification; selection and compensation of judge.

(a) A contest case governed by this article shall be tried and determined by the superior court of the county where the defendant resides, except that a municipal contest case shall be tried and determined by

the superior court of the county where the city hall is located. A contest case challenging the eligibility of the two defendants declared as eligible to compete with each other in a run-off primary or election shall be tried and determined by the superior court of the county where the defendant who received the highest number of votes resides.

(b) The superior court having jurisdiction of a contest case governed by this article shall be presided over by a superior court judge or senior judge. The superior court judge or senior judge who presides over the contest shall be selected as set out in subsection (c) of this Code section.

(c) Upon the filing of a contest petition, the clerk of the superior court having jurisdiction shall immediately notify the administrative judge for the judicial administrative district in which that county lies, or the district court administrator, who shall immediately notify the administrative judge, of the institution of proceedings under this article. If the county in which the proceedings were instituted is not in the circuit of the administrative judge, the administrative judge shall select a superior court judge from within the district, but not from the circuit in which the proceeding was instituted, or a senior judge not a resident of the circuit in which the proceeding was instituted, to preside over the contest.

(d) If the administrative judge is a member of the circuit in which the proceeding was filed, or if the other judges of the district are unable or are unwilling to preside over the proceeding, or if the other judges of the district are judges of the circuit in which the proceeding was filed, then the administrative judge shall select an administrative judge of an adjoining district to select a superior court judge from that district, or a superior court judge from the district in which the proceeding was filed, but not the circuit in which the proceeding was filed, or a senior judge who is not a resident of the circuit wherein the proceeding was filed.

(e) After a judge has agreed to preside over the case, the administrative judge who selected the judge to hear the matter shall enter an order in the superior court of the county where the proceeding was filed appointing such judge, and such judge shall promptly begin presiding over such proceedings in such court and shall determine same as soon as practicable. Such judge shall be reimbursed for his or her actual expenses for food and lodging and shall receive the same mileage as any other state officials and employees. Senior judges shall be entitled to compensation and reimbursement as the law provides for senior judge service.

History.
Code 1933, § 34-1704, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 1; Ga. L. 1977, p. 175, § 1; Ga. L.

1991, p. 608, § 2; Ga. L. 1998, p. 295, § 1.

Cross references.

Mileage and actual travel expenses for state officials, § 50-19-7.

Law reviews.

For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 34-2801, 34-2802, 34-2803, 34-3001 and Code Section 21-3-424 are included in the annotations for this Code section.

Who was proper presiding judge. — Under O.C.G.A. § 21-2-523, a superior court judge or a senior superior court judge had to be selected to preside over the dismissal of the election contest action. Williams v. Heard, 302 Ga. 114, 805 S.E.2d 1, 2017 Ga. LEXIS 773 (2017).

Protest filed prior to declaration of results. — Although technically incorrect, a protest may be lodged prior to the governing authority's declaring the results of the election where such a handling affords the parties substantial justice. Garnto v. Wheeler, 235 Ga. 405, 219 S.E.2d 721, 1975 Ga. LEXIS 895 (1975).

Time limit for filing petition. — The requirement that a petition to contest shall be filed within five days after the results of the election are certified by the election official means in effect "not later than" that date. Whittington v. Mathis, 253 Ga. 653, 324 S.E.2d 727, 1985 Ga. LEXIS 511 (1985).

Failure to comply with five-day limit. — Where the contestants failed to comply with the five-day limit, the trial court lacked jurisdiction to decide the merits of the contest. Mayor & Council v. Hall, 261 Ga. 681, 410 S.E.2d 105, 1991 Ga. LEXIS 940 (1991).

Agent of court fails to follow procedure. — The right to contest the results of an election through the expedited procedure of former subsection (c) of O.C.G.A. § 21-3-424 is not waived by the clerk of court's failure to follow the procedure outlined in former subsection (f). Stuckey v. Storms, 265 Ga. 491, 458 S.E.2d 344, 1995 Ga. LEXIS 516 (1995) (decided under former § 21-3-424).

Holding of election is generally a political matter not ordinarily cognizable in a court of equity. Committee for New Cobb County Revenue v. Brown, 228 Ga. 364, 185 S.E.2d 534, 1971 Ga. LEXIS 567 (1971).

Jurisdiction of an ordinary (now superintendent) to determine contest arising out of election of constable is limited, and the ordinary has no power other than that expressly conferred by statute, and in such a proceeding the ordinary does not act in a judicial or quasi-judicial capacity; consequently the ordinary's sole authority and jurisdiction is to determine whether the person filing the contest or the one who was declared elected received the greater number of legal votes, and, in case the contestant received it, to declare the contestant duly elected. Thompson v. Stone, 205 Ga. 243, 53 S.E.2d 458, 1949 Ga. LEXIS 356 (1949) (decided under former Code 1933, §§ 34-2801, 34-2802, 34-2803, 34-3001).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction over challenge of one holding office of sheriff. — Jurisdiction to hear a case seeking to challenge the qualifications of a person to hold the office of sheriff rests with the superior courts. 1980 Op. Att'y Gen. No. U80-1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 396 et seq.

C.J.S.
29 C.J.S., Elections, § 444 et seq.

21-2-524. Filing of petition to contest primary or election; procedures for service, notice, answer, and amendment.

(a) A petition to contest the result of a primary or election shall be filed in the office of the clerk of the superior court having jurisdiction within five days after the official consolidation of the returns of that particular office or question and certification thereof by the election official having responsibility for taking such action under this chapter or within five days after the official consolidation and certification of the returns of that particular office or question by the election official having responsibility for taking such action under this chapter following a recount pursuant to Code Section 21-2-495 and shall allege:

(1) The contestant's qualification to institute the contest;

(2) The contestant's desire to contest the result of such primary or election and the name of the nomination, office, or question involved in the contest;

(3) The name of the defendant;

(4) The name of each person who was a candidate at such primary or election for such nomination or office in the case of a contest involving same;

(5) Each ground of contest;

(6) The date of the official declaration of the result in dispute;

(7) The relief sought; and

(8) Such other facts as are necessary to provide a full, particular, and explicit statement of the cause of contest.

(b) The State Election Board shall be served with a copy of the petition, as provided in subsection (a) of this Code section, by serving the same on the chairperson thereof, by mailing a copy to the chairperson by certified or registered mail or statutory overnight delivery; and a certificate that such service has been made shall be filed by the plaintiff or his or her attorney.

(c) When an error in the counting of votes is alleged as a ground of contest, it is sufficient for the contestant to state generally that he or she believes that error was committed in the counting of the votes cast for the filling of the nomination or office in dispute, or for or against the question in dispute, in one or more specified precincts; and it shall not

be necessary for the contestant to offer evidence to substantiate such allegation. If a recount of the votes cast in any precinct or precincts shall change the result in dispute, any aggrieved litigant may require a recount of the votes affecting such result, which were cast in any other precinct or precincts, by amending his or her pleadings and requesting such relief.

(d) The petition shall be verified by the affidavit of each contestant. Such affidavit shall be taken and subscribed before some person authorized by law to administer oaths and shall state that the contestant believes the facts alleged therein are true, that according to the best of his or her knowledge and belief the contested result of the primary or election is illegal and the return thereof incorrect, and that the petition to contest the same is made in good faith.

(e) A statement of the grounds of contest shall not be rejected, nor the proceedings dismissed by any court, for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which the primary or election is contested.

(f) Upon such petition being filed, the clerk of the superior court shall issue notice, in the form of special process directed to the sheriff of such county, requiring the defendant and any other person named in such petition as a candidate for such nomination or office, if any, to appear and answer such petition, on a day to be fixed in such notice, not more than ten days nor less than five days after the service of such notice. Such notice, with a copy of the petition attached, shall be served by the sheriff upon the defendant and any other person named therein in the same manner as petitions and process are served in other civil cases. On or before the day fixed in such notice, unless for good cause shown the presiding judge shall extend the time therefor, the defendant shall appear and answer such petition and may set up by way of answer or cross action any right of interest he or she may have or claim in such proceeding. Any other person who was a candidate at such primary or election for the nomination or office involved and upon whom notice was served as provided in this subsection shall be deemed a litigant to such proceeding and may set up by way of answer or cross action any right of interest or claim he or she may have.

(g) After filing, any petition, cross action, or answer may be amended with leave of the court so as to include the specification of additional grounds of contest, other relevant facts, or prayer for further relief. After each amendment, a reasonable time to respond shall be given by the court to any opposing litigant.

History. Ga. L. 1893, p. 124, § 1; Civil Code 1895, § 107; Ga. L. 1898, p. 44, § 1; Civil Code 1910, § 121; Code 1933, § 34-2801;

Code 1933, § 34-1705, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 24; Ga. L. 1979, p. 955, § 8; Ga. L. 1982, p. 1512, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1989, p. 1748, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2000, p. 1589, § 4.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the amendment to subsection (b) is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Section constitutional. — This section did not violate the constitutional requirement that the legislative, judicial, and executive functions of government shall forever remain separate and distinct. Freeman v. State ex rel. McDonald, 72 Ga. 812, 1884 Ga. LEXIS 325 (1884); Johnson v. Jackson, 99 Ga. 389, 27 S.E. 734, 1896 Ga. LEXIS 416 (1896).

Georgia Election Code does not provide sole and exclusive means for challenging eligibility to hold public office since a quo warranto suit may also be brought. White v. Miller, 235 Ga. 192, 219 S.E.2d 123, 1975 Ga. LEXIS 818 (1975).

Service of process. — In an election contest, the trial court did not err in dismissing the plaintiff's petition because, despite repeated indications that the winning candidate had never been served with the special process required, the plaintiff did not exercise diligence in ensuring that, once issued by the clerk, the special process was served on the candidate by the sheriff. Schmitz v. Barron, 312 Ga. 523, 863 S.E.2d 121, 2021 Ga. LEXIS 629 (2021).

Basis for belief that error occurred. — In O.C.G.A. § 21-2-524 and other statutory provisions, the General Assembly has expressed an intent that the public inform itself of the accuracy of the voting process. It would be inconsistent with that intent to permit someone to force a recount under O.C.G.A. § 21-2-524(c) based on the mere speculative belief that an error in counting occurred. Ellis v. Johnson, 263 Ga. 514, 435 S.E.2d 923, 1993 Ga. LEXIS 787 (1993).

O.C.G.A. § 21-2-524(c) allows an election recount based on a contestant's stated belief that there was a miscount without proof that an actual counting error occurred, but O.C.G.A. § 21-2-524(a)(8) requires that some factual basis or "cause" for such belief be alleged and proved. Ellis v. Johnson, 263 Ga. 514, 435 S.E.2d 923, 1993 Ga. LEXIS 787 (1993).

Burden is on the complaining party to affirmatively show that facially valid results are invalid due to an irregularity sufficient to place the entire election in doubt. Johnson v. Rheney, 245 Ga. 316, 264 S.E.2d 872, 1980 Ga. LEXIS 779 (1980).

Election challenger's timely filed election contest, filed after the election, was erroneously dismissed, as such was not moot merely because the challenger failed to file the contest prior to the election, given that no statutory provision or case law supported this proposition, and the petition sufficiently stated a claim upon which relief could be granted. Allen v. Yost, 281 Ga. 102, 636 S.E.2d 517, 2006 Ga. LEXIS 836 (2006).

It is unnecessary for the contestant to plead the details of the evidence when the contestant challenges the validity of election results. Bush v. Johnson, 111 Ga. App. 702, 143 S.E.2d 21, 1965 Ga. App. LEXIS 1074 (1965).

Sufficient evidence of fraud. — Charges that more ballots were found in the box at precincts than the number of persons listed by the holders of the election as having voted, or that less ballots were found in one box than the number of people who had voted in that precinct, amounted to serious charges of fraud in the holding of the election. The charges were as definite and full as could be expected in this situation and were sufficient to raise the question as to whether the election has been conducted in a manner so illegally, fraudulently, and unfairly as to fall under condemnation of the law. Bush v. Johnson, 111 Ga. App. 702, 143 S.E.2d 21, 1965 Ga. App. LEXIS 1074 (1965).

Insufficient evidence of fraud. — In an election contest because the contestor

did not present any evidence showing a factual basis to establish fraud by casting doubt on the counting of a single vote, but instead presented web site information, which had nothing to do with any miscounting of votes or the mishandling of any absentee ballots, such evidence was insufficient to support an election contest. Davis v. Dunn, 286 Ga. 582, 690 S.E.2d 389, 2010 Ga. LEXIS 175 (2010).

Sections of the former Code provided an adequate remedy at law for a contestant and no resort lies to a court of equity. Tupper v. Dart, 104 Ga. 179, 30 S.E. 624, 1898 Ga. LEXIS 302 (1898).

Time for filing contest. — The five-day period for filing an election contest begins after the results are certified by the Secretary of State, not after each county certifies its results. Hammill v. Valentine, 258 Ga. 603, 373 S.E.2d 9, 1988 Ga. LEXIS 423 (1988).

When there is a recount, the five-day period to contest an election begins to run from the date of the certification of the recount by the Secretary of State, not from the certification of the election. Hammill v. Valentine, 258 Ga. 603, 373 S.E.2d 9, 1988 Ga. LEXIS 423 (1988).

Trial court erred in finding that the State Election Board was not properly served with process of an election candidate's challenge to an election contest; but, the candidate's failure to effect timely service of appropriate process of the contest against the mayor-elect required dismissal of the suit. Swain v. Thompson, 281 Ga. 30, 635 S.E.2d 779, 2006 Ga. LEXIS 592 (2006).

Trial court did not err in dismissing the candidates' petition contesting a general election on the ground that the petition was not filed within five days after the official consolidation of the returns and certification thereof pursuant to O.C.G.A. § 21-2-524(a). When the board certified the election results on November 7, the candidates had through November 12 to file a petition, but, since they did not file the petition until November 17, the trial court was without jurisdiction to decide the merits of the election contest, and the trial court's finding that the date of certification was November 7 was supported by evidence that, on that date, the chairman of the county board of elections signed the certification form on the only signature line provided for the superintendent; although each plaintiff has five days in which to file a petition challenging an election, O.C.G.A. § 21-2-524(a) clearly permits different filing dates for different races in any given election, depending on when the appropriate party certifies the results for the "particular office" at issue. Broughton v. Douglas County Bd. of Elections, 286 Ga. 528, 690 S.E.2d 141, 2010 Ga. LEXIS 60 (2010).

Trial court did not err in ruling that certification by a county board of elections and registration triggered the five-day filing period of O.C.G.A. § 21-2-524(a) because the five-day period of § 21-2-524(a) for filing a petition to contest the election results for a county office began to run when the county superintendent had officially consolidated and certified the returns for the particular office; because the Secretary of State only certifies election returns for federal and state offices, the sole election official specified in the Georgia Code as having responsibility for consolidation and certification of election results for other offices is the local superintendent. Broughton v. Douglas County Bd. of Elections, 286 Ga. 528, 690 S.E.2d 141, 2010 Ga. LEXIS 60 (2010).

Election Code does not provide that a mandatory recount and re-certification of the results in one race require re-certification of the results in other races and a second opportunity to contest such other elections; the apparent loser of the race that is the subject of the recount must be given five days after re-certification in which to challenge the election, but the exception to measurement of the five-day period from the date of initial certification does not apply to candidates whose races were not subject to a recount, who have remained the apparent losers since certification of their races, and who have therefore already had a real opportunity to challenge the election within five days after certification of the initial count. Broughton v. Douglas County Bd. of Elections, 286 Ga. 528, 690 S.E.2d 141, 2010 Ga. LEXIS 60 (2010).

Laches applied to bar suit filed 42 days after election approving contested tax. — Even though laches operated independently of any statute of limi-

tations, courts of equity usually acted in obedience and in analogy to the statutes of limitations in cases where it would not have been unjust and inequitable to have done so; laches was properly applied to bar a suit seeking an injunction against a tax which was filed 42 days after the election approving the tax. Plyman v. Glynn County, 276 Ga. 426, 578 S.E.2d 124, 2003 Ga. LEXIS 257 (2003).

Contest prohibited after legal commission issued. — By this section, which prohibited a contest after a commission had been issued, was meant a legal commission only, and not one which was issued prematurely. Hardin v. Colquitt, 63 Ga. 588, 1879 Ga. LEXIS 286 (1879).

Noncandidates cannot contest election. — Petitioners who are not candidates for the offices to which the defendants were elected are not in a position to contest the election. Jones v. McElreath, 167 Ga. 833, 146 S.E. 734, 1929 Ga. LEXIS 43 (1929).

Procedure not in accordance with former section not legal contest. — A procedure which was not in accordance with the above rules and regulations was not such a contest of the election as was provided and required by the rules and regulations of former Code 1910, § 121. Norwood v. Peeples, 158 Ga. 162, 122 S.E. 618, 1924 Ga. LEXIS 98 (1924).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 401 et seq.

C.J.S.

29 C.J.S., Elections, §§ 451 et seq., 467 et seq.

ALR.

Validity, construction and application of state statutory limitations periods governing election contests, 60 A.L.R.6th 481.

21-2-525. Hearing; powers of court generally.

(a) Within 20 days after the return day fixed in the notice as provided in subsection (a) of Code Section 21-2-524 to the defendant, the presiding judge shall fix a place and time for the hearing of the contest proceeding. Such judge may fix additional hearings at such other times and places as are necessary to decide the contest promptly.

(b) The court having jurisdiction of the action shall have plenary power, throughout the area in which the contested primary or election was conducted, to make, issue, and enforce all necessary orders, rules, processes, and decrees for a full and proper understanding and final determination and enforcement of the decision of every such case, according to the course of practice in other civil cases under the laws of this state, or which may be necessary and proper to carry out this chapter. The court shall have authority to subpoena and to compel the attendance of any officer of the primary or election complained of and of any person capable of testifying concerning the same; to compel the production of evidence which may be required at such hearing, in like manner and to the same extent as in other civil cases litigated before such court; to take testimony; and to proceed without delay to the hearing and determination of such contest, postponing for the purpose, if necessary, all other business.

(c) The court may, in its discretion, limit the time to be consumed in taking testimony, dividing such time equitably among all litigants concerned, with a view therein to the circumstances of the matter and to the proximity of the next succeeding primary or election.

History.
Ga. L. 1893, p. 124, § 1; Civil Code 1895, § 107; Civil Code 1910, § 121; Code 1933, § 34-2801; Code 1933, § 34-1706, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former § 21-3-425 are included in the annotations for this Code section.

Time for hearing. — The requirement that the judge must set a hearing date "within 20 days after the return day" provides a deadline by which a date must be set. Head v. Williams, 269 Ga. 894, 506 S.E.2d 863 (decided under former § 21-3-425).

The trial court did not violate the statute by setting a hearing date on the same day as the return day fixed in the notice to the defendants where from the time the petitioner filed the petitioner's petition, the petitioner knew that the petitioner had the burden of presenting evidence to support the petitioner's allegations of illegal voting and tampering with absentee ballots and where the petitioner had six days' notice that a hearing date was being set and three days' notice of the actual date of the hearing. Head v. Williams, 269 Ga. 894, 506 S.E.2d 863 (decided under former § 21-3-425).

When court required to inspect vote recorder ballots. — In the absence of any statutory authority authorizing a hand count and determination by election officials of voter intent with regard to nondefective ballots voted by means of vote recorders, and in the absence of allegations or proof of fraud, misconduct by election officials, improper functioning of vote recorders or tabulating machines, a court, in an election contest, is not bound under this section to require the inspection or hand count of nondefective ballots voted by means of vote recorders. Rary v. Guess, 129 Ga. App. 102, 198 S.E.2d 879, 1973 Ga. App. LEXIS 898 (1973).

No error in limiting discovery and denying continuance regarding direct-recording electronic voting system. — In an election contest under O.C.G.A. § 21-2-522 regarding a race for lieutenant governor, the small number of irregularities involved with the direct-recording electronic (DRE) voting system and the lack of evidence of misconduct by any election official was insufficient to overcome the winner's margin of victory of 123,172 votes. Further, the trial court did not err in limiting discovery of the DRE machines or in denying the challengers' motion for a continuance and jury trial demand. Martin v. Fulton County Bd. of Registration & Elections, 307 Ga. 193, 835 S.E.2d 245, 2019 Ga. LEXIS 724 (2019).

Judge's function under this section is not judicial. Carter v. James, 96 Ga. 280, 23 S.E. 201, 1895 Ga. LEXIS 57 (1895).

When evidence of defendant's liability is conflicting, court may hold hearing on costs. — When the presiding judicial officer hearing a contested election case issued a fi. fa. for costs and the evidence of the defendant's liability was conflicting, the judge of the superior court did not abuse judicial discretion in issuing, upon petition, a restraining order against execution of the fi. fa. until a hearing could be held on the issues raised by the pleadings. McLeod v. Reid, 120 Ga. 785, 48 S.E. 315, 1904 Ga. LEXIS 707 (1904).

Decision of the ordinary (now probate judge) in a contested "fence or no fence" election is final. Skrine v.

Jackson, 73 Ga. 377, 1884 Ga. LEXIS 132 (1884), overruled, Barrentine v. Griner, 205 Ga. 830, 55 S.E.2d 536, 1949 Ga. LEXIS 607 (1949).

Burden of showing election returns inaccurate is upon the intervenor. Brown v. City of Atlanta, 152 Ga. 283, 109 S.E. 666, 1921 Ga. LEXIS 78 (1921).

Decision of superior court judge final. — Where the election of a county officer was contested, and the evidence which was taken before a justice of the peace of the county, together with all the papers filed in the contest, was duly transmitted to the judge of the superior court of the circuit in which the contest arose, the decision by the latter therein is final, and the writ of certiorari will not lie to review the contest. Robertson v. Easley, 20 Ga. App. 258, 92 S.E. 1027, 1917 Ga. App. LEXIS 853 (1917).

Ordinary's decision in municipal election contest is final. — Where an ordinary renders a decision in a contest over a municipal election, the ordinary does not act in a judicial capacity, thus a writ of certiorari to the superior court to review the contest does not lie. Harris v. Glenn, 141 Ga. 687, 81 S.E. 1103, 1914 Ga. LEXIS 118 (1914).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 413 et seq., 424 et seq.

C.J.S.
29 C.J.S., Elections, § 534 et seq.

21-2-526. Trial by jury.

(a) All issues of a contest shall be fully tried and determined by the court without the aid and intervention of a jury, unless a litigant to the contest shall demand a trial by jury at any time prior to the call of the case; and the court shall determine that it is an issue which under other laws of this state the litigant is entitled to have tried by a jury. Upon such determination, a jury shall be impaneled and the cause shall proceed according to the practice and procedure of the court in jury cases.

(b) In a case contesting the result of a primary or election held in two or more counties, each issue to be tried by a jury shall be tried by a jury impaneled in the county where such issue or a part thereof arose. Such jury shall be impaneled by the superior court of the county in which the jury trial is to be conducted; such trial shall be presided over by the judge as described in Code Section 21-2-523; and such trial shall proceed, insofar as practicable, as though it were being conducted in the county of the superior court having jurisdiction of the contest.

(c) In a case contesting the result of a primary or election held within a single county, the court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In a case contesting the result of a primary or election held in two or more counties, the court shall require each jury impaneled to return only a special verdict in the form of a special written finding upon each issue of fact. In a case where a special verdict is to be rendered, the court shall submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several

special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If, in so doing, the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his or her right to a trial by jury of the issue so omitted unless before the jury retires he or she demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

History.
Code 1933, § 34-1707, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Trial by jury in election contest not required. — Trial court properly denied two challengers' petition contesting a city's general election as the challengers failed to show fraud, misconduct, irregularity or illegality; a new election manager was not required for each election; a jury trial was not warranted in the matter; and there was no basis shown to set aside the results of the runoff election. Fuller v. Thomas, 284 Ga. 397, 667 S.E.2d 587, 2008 Ga. LEXIS 807 (2008).

In an election contest under O.C.G.A. § 21-2-522 regarding a race for lieutenant governor, the small number of irregularities involved with the direct-recording electronic (DRE) voting system and the lack of evidence of misconduct by any election official was insufficient to overcome the winner's margin of victory of 123,172 votes. Further, the trial court did not err in limiting discovery of the DRE machines or in denying the challengers' motion for a continuance and jury trial demand. Martin v. Fulton County Bd. of Registration & Elections, 307 Ga. 193, 835 S.E.2d 245, 2019 Ga. LEXIS 724 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Determination of candidate's qualifications. — It is not the responsibility of a judge of the probate court, or a county board of elections, to determine the qualifications of a candidate in a general or special election, nor does the Georgia Election Code grant authority to either a judge of the probate court or a county board of elections to make a factual determination as to the eligibility of a potential candidate. 1976 Op. Att'y Gen. No. 76-90.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 427.

C.J.S.
29 C.J.S., Elections, § 534 et seq.

21-2-527. Pronouncement of judgment; effect of finding of misconduct by poll officers; calling of second primary, election, or runoff by court upon finding of defects.

(a) After hearing the allegations and evidence in the contest, the court shall declare as nominated, elected, or as eligible to compete in a run-off primary or election that qualified candidate who received the requisite number of votes and shall pronounce judgment accordingly; and the clerk of the superior court shall certify such determination to the proper authority. In the case of a contest involving a question submitted to electors at an election, the court shall pronounce judgment as to whether the same was approved or disapproved; and the clerk of the superior court shall certify such determination to the defendant.

(b) When a defendant who has received the requisite number of votes for nomination, election, or to compete in a run-off primary or election is determined to be ineligible for the nomination or office sought, the court shall pronounce judgment declaring the primary or election invalid with regard to such nomination or office and shall call a second primary or election to fill such nomination or office and shall set the date for such second primary or election.

(c) If misconduct is complained of on the part of the poll officers of any precinct, it shall not be held sufficient to set aside the contested result unless the rejection of the vote of such precinct would change such result.

(d) Whenever the court trying a contest shall determine that the primary, election, or runoff is so defective as to the nomination, office, or eligibility in contest as to place in doubt the result of the entire primary, election, or runoff for such nomination, office, or eligibility, such court shall declare the primary, election, or runoff to be invalid with regard to such nomination, office, or eligibility and shall call for a second primary, election, or runoff to be conducted among all of the same candidates who participated in the primary, election, or runoff to fill such nomination or office which was declared invalid and shall set the date for such second primary, election, or runoff.

History.

Code 1933, § 34-1708, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1987, p. 34, § 1; Ga. L. 1987, p. 1360, § 19; Ga. L. 1991, p. 133, § 1; Ga. L. 1995, p. 1027, § 17; Ga. L. 1997, p. 590, § 40; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Extent of jurisdiction over primary contest. — In a contest of primary election, the trial court's jurisdiction is limited strictly to the primary, and the court is not authorized to interfere with the holding of the subsequent general election. Smiley v. Gaskin, 115 Ga. App. 547, 154 S.E.2d 740, 1967 Ga. App. LEXIS 1166 (1967).

What contestant must show. — If the contestant can sustain charges, or enough of them to cast doubt upon whether the election was fairly and lawfully conducted, it should be voided and another held. If the contestant cannot, the election should stand. Nichols v. Acree, 112 Ga. App. 287, 145 S.E.2d 92, 1965 Ga. App. LEXIS 672 (1965).

Insufficient evidence of irregularities and misconduct in election. — In an election contest under O.C.G.A. § 21-2-522 regarding a race for lieutenant governor, the small number of irregularities involved with the direct-recording electronic (DRE) voting system and the lack of evidence of misconduct by any election official was insufficient to overcome the winner's margin of victory of 123,172 votes. Further, the trial court did not err in limiting discovery of the DRE machines or in denying the challengers' motion for continuance and jury trial demand. Martin v. Fulton County Bd. of Registration & Elections, 307 Ga. 193, 835 S.E.2d 245, 2019 Ga. LEXIS 724 (2019).

Persons who may compete in rerun. — The ordering of a rerun of a primary, after a contest in a race is sustained, is no reason for permitting other persons, who were not properly qualified to run in the contested primary, to qualify and compete in the rerun. Ingram v. Lott, 238 Ga. 513, 233 S.E.2d 770, 1977 Ga. LEXIS 1080 (1977).

Overruling of a general demurrer (since abolished) to an election contest proceeding is appealable. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

Improperly cast ballots must affect race in question. — Where contestant established that 131 absentee ballots were not properly cast in the general election, but the contestant did not establish that any of the improper absentee ballots were cast in the contested race, the contestant was unable to place in doubt the result of the election, and the trial court correctly found in favor of the winner as certified by the county superintendent of election. Bailey v. Colwell, 263 Ga. 111, 428 S.E.2d 570, 1993 Ga. LEXIS 400 (1993).

Referendum lacked validity in attempted annexation. — Trial court did not retroactively redraw a city's boundaries as the house bill incorporated the neighborhood into the city when the bill was signed into law on April 26, 2016; thus, the larger city's effort to annex the neighborhood was untimely and invalid. As a result, the neighborhood was incorporated into the city before the referendum, was included in the referendum vote, and could only have left the city had the referendum failed. Harris v. City of S. Fulton, 358 Ga. App. 788, 856 S.E.2d 361, 2021 Ga. App. LEXIS 132 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Voters in rerun election. — When a rerun of an election is ordered by a judge of the superior court as a result of the sustaining of an election contest, the rerun election should be limited to those voters who were qualified to vote in the original election. 1985 Op. Att'y Gen. No. 85-14.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 428.

C.J.S.

29 C.J.S., Elections, § 542 et seq.

ALR.

Constitutionality, construction, and application of statute which declares a defeated candidate for nomination ineligible as a candidate at general election, or prohibits printing his name on official ballot, 143 A.L.R. 603.

Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast, 155 A.L.R. 677.

21-2-527.1. Right of parties to object to settlement; court approval.

No settlement of any case under this article shall become effective unless:

(1) All parties to such case have been given an opportunity to object to such settlement before the court; and

(2) The court has approved such settlement.

History.
Code 1981, § 21-2-527.1, enacted by Ga. L. 1987, p. 1050, § 2; Ga. L. 1998, p. 295, § 1.

21-2-528. Appeals from court's determination on contest petition.

An appeal from the final determination of the court may be taken within ten days from the rendition thereof as in other civil cases. The filing of a notice of appeal shall not act as a stay or supersedeas. The appellant may apply to the appellate court for a stay or supersedeas, and such court shall consider applications for stays or supersedeas in such cases without regard to whether any notice of appeal has been filed or the record docketed in such cases.

History.
Code 1933, § 34-1709, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1997, p. 590, § 41; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 60; Ga. L. 2016, p. 883, § 3-7/HB 927.

Editor's notes.
Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews.
For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

JUDICIAL DECISIONS

Election contest is a civil case. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

Georgia Supreme Court's decision in Kendall v. Delaney, 282 Ga. 482 (2007) is an outlier in Georgia's general election case law and relies solely on cases involving primary election challenges without acknowledging the distinction between primary and general elections and is overruled; to the extent that Scoggins v. Collins, 288 Ga. 26 (2010) implies that a general election challenge will be moot if a party fails to seek a stay or supersedeas pursuant to O.C.G.A. § 21-2-528, it is disapproved. Parham v. Stewart, 308 Ga. 170, 839 S.E.2d 605, 2020 Ga. LEXIS 128 (2020).

What contestant must show. — If the contestant can sustain the charges, or enough of them to cast doubt upon whether the election was fairly and lawfully conducted, it should be voided and another held. If the contestant cannot, the election should stand. Nichols v. Acree,

112 Ga. App. 287, 145 S.E.2d 92, 1965 Ga. App. LEXIS 672 (1965).

Appeal of contestant to city council election dismissed as moot. — The appeal of a contestant to a city council election was dismissed as moot because the contestant failed to move to expedite consideration of an appeal in view of an impending election, and the Supreme Court of Georgia finally heard the appeal after the election had already occurred and the term of office for the seat at issue had expired. Allen v. Yost, 282 Ga. 865, 655 S.E.2d 580, 2008 Ga. LEXIS 21 (2008).

Appeal from order dismissing challenge to primary election dismissed as moot. — Because the record showed that an unsuccessful candidate in a primary election waited nearly a month and a half to challenge that election, request a stay of the general election, or petition the Supreme Court of Georgia for an expedited appeal, the mootness doctrine applied to the challenge requiring dismissal of the appeal. McCreary v. Martin, 281 Ga. 668, 642 S.E.2d 80, 2007 Ga. LEXIS 168 (2007).

Finding that the appellant failed to show that enough illegal votes had been cast to change or place in doubt the result of the mayoral election was upheld because the appellant failed to show that one voter was not a resident of the city, that another was inappropriately offered something of value in exchange for a vote, and that another voter was incompetent to vote in the mayoral election thereby making their votes valid. Parham v. Stewart, 308 Ga. 170, 839 S.E.2d 605, 2020 Ga. LEXIS 128 (2020).

Appeal of election contests. — While the established rule in Georgia is that a primary election contest becomes moot after the general election has taken place, the Georgia Supreme Court has routinely decided general election challenges on the merits, regardless of whether a stay or supersedeas was requested or obtained. Parham v. Stewart, 308 Ga. 170, 839 S.E.2d 605, 2020 Ga. LEXIS 128 (2020).

Overruling of a general demurrer (since abolished) to an election contest proceeding is appealable. Blackburn v. Hall, 115 Ga. App. 235, 154 S.E.2d 392, 1967 Ga. App. LEXIS 1074 (1967).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 429, 430.

C.J.S.
29 C.J.S., Elections, § 547 et seq.

21-2-529. Liability for costs; methods of collecting.

The contestant and the defendant shall be liable to the officers and witnesses for the costs made by them, respectively. If the result of the primary or election is confirmed, the petition dismissed, or the prosecution fails, judgment shall be rendered against the contestant for costs; and, if the judgment is against the defendant or the result of the primary or election is set aside, he or she shall pay the costs at the discretion of the court. After entry of judgment, the costs may be collected by attachment or otherwise.

History.
Code 1933, § 34-1710, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 327.

C.J.S.
29 C.J.S., Elections, § 561 et seq.

ALR.

Costs or reimbursement for expenses incident to election contest or recount, 106 A.L.R. 928.

ARTICLE 14

SPECIAL ELECTIONS AND PRIMARIES GENERALLY; MUNICIPAL TERMS OF OFFICE

Cross references.

Special elections pertaining to prohibition of package sales of distilled spirits in counties and municipalities, § 3-4-40 et seq.

Special elections in counties and municipalities pertaining to authorization of sale of distilled spirits by private clubs, § 3-7-41.

Registration of voters for special primaries and elections, § 21-2-228.

Circumstances giving rise to special primary or election, § 21-2-504.

Conducting of recall elections in same manner as special elections, § 21-4-14.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-540. Conduct of special primaries and special elections generally.

(a)(1) Every special primary and special election shall be held and conducted in all respects in accordance with the provisions of this chapter relating to general primaries and general elections; and the provisions of this chapter relating to general primaries and general elections shall apply thereto insofar as practicable and as not inconsistent with any other provisions of this chapter. All special primaries and special elections held at the time of a general primary, as provided by Code Section 21-2-541, shall be conducted by the poll officers by the use of the same equipment and facilities, insofar as practicable, as are used for such general primary. All special primaries and special elections held at the time of a general election, as provided by Code Section 21-2-541, shall be conducted by the poll officers by the use of the same equipment and facilities, insofar as practicable, as are used for such general election.

(2) If a vacancy occurs in a partisan office to which the Governor is authorized to appoint an individual to serve until the next general election, a special primary shall precede the special election.

(b) At least 29 days shall intervene between the call of a special primary and the holding of same, and at least 29 days shall intervene between the call of a special election and the holding of same. The period during which candidates may qualify to run in a special primary or a special election shall remain open for a minimum of two and one-half days. Special primaries and special elections which are to be held in conjunction with the presidential preference primary, a state-wide general primary, or state-wide general election shall be called at

least 90 days prior to the date of such presidential preference primary, state-wide general primary, or state-wide general election; provided, however, that this requirement shall not apply to special primaries and special elections held on the same date as such presidential preference primary, state-wide general primary, or state-wide general election but conducted completely separate and apart from such state-wide general primary or state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork.

(c)(1) Notwithstanding any other provision of law to the contrary, a special primary or special election to fill a vacancy in a county or municipal office shall be held only on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years, any such special primary or special election shall only be held on:

(i) The third Tuesday in March;

(ii) The third Tuesday in June;

(iii) The third Tuesday in September; or

(iv) The Tuesday after the first Monday in November; and

(B) In even-numbered years, any such special primary or special election shall only be held on:

(i) The third Tuesday in March; provided, however, that in the event that a special primary or special election is to be held under this provision in a year in which a presidential preference primary is to be held, then any such special primary or special election shall be held on the date of and in conjunction with the presidential preference primary;

(ii) The date of the general primary; or

(iii) The Tuesday after the first Monday in November;

provided, however, that, in the event that a special primary or special election to fill a federal or state office on a date other than the dates provided in this paragraph has been scheduled and it is possible to hold a special primary or special election to fill a vacancy in a county, municipal, or school board office in conjunction with such special primary or special election to fill a federal or state office, the special primary or special election to fill such county, municipal, or school board office may be held on the date of and in conjunction with such special primary or special election to fill such federal or state office, provided all other provisions of law regarding such primaries and elections are met.

(2) Notwithstanding any other provision of law to the contrary, a special election to present a question to the voters shall be held only

on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years, any such special election shall only be held on the third Tuesday in March or on the Tuesday after the first Monday in November; and

(B) In even-numbered years, any such special election shall only be held on:

(i) The date of and in conjunction with the presidential preference primary if one is held that year;

(ii) The third Tuesday in March; provided, however, that such special election shall occur prior to July 1, 2024, and present a question to the voters on sales and use taxes authorized by Articles 5, 5A, and 5B of Chapter 8 of Title 48;

(iii) The date of the general primary; or

(iv) The Tuesday after the first Monday in November.

(3) The provisions of this subsection shall not apply to:

(A) Special elections held pursuant to Chapter 4 of this title, the "Recall Act of 1989," to recall a public officer or to fill a vacancy in a public office caused by a recall election; and

(B) Special primaries or special elections to fill vacancies in federal or state public offices.

(d) Except as otherwise provided by this chapter, the superintendent of each county or municipality shall publish the call of the special primary or special election.

(e)(1) Candidates in special elections for partisan offices that are not preceded by special primaries shall be listed alphabetically on the ballot and may choose to designate on the ballot their party affiliation. The party affiliation selected by a candidate shall not be changed following the close of qualifying.

(2) Candidates in special primaries shall be listed alphabetically on the ballot.

History.

Code 1933, §§ 34-806, 34-1314, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, § 35; Ga. L. 1969, p. 329, § 8A; Ga. L. 1984, p. 1, § 14; Ga. L. 1984, p. 638, § 3; Ga. L. 1986, p. 382, § 6; Ga. L. 1986, p. 1538, § 3; Ga. L. 1991, p. 316, § 1; Ga. L. 1994, p. 1406, § 27; Ga. L. 1996, p. 145, § 21; Ga. L. 1997, p. 590, § 42; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, §§ 43, 44; Ga. L. 2005, p. 253, § 64/HB 244; Ga. L. 2008, p. 131, § 1/HB 296; Ga. L. 2010, p. 914, § 25/HB 540; Ga. L. 2012, p. 995, §§ 41, 42/SB 92; Ga. L. 2014, p. 1, § 8/HB 310; Ga. L. 2017, p. 2, § 3/HB 42; Ga. L. 2021, p. 14, § 43/SB 202; Ga. L. 2022, p. 310, § 1/HB 907.

The 2021 amendment, effective March 25, 2021, rewrote subsection (a), which read: "Every special election shall

be held and conducted in all respects in accordance with the provisions of this chapter relating to general elections; and the provisions of this chapter relating to general elections shall apply thereto insofar as practicable and as not inconsistent with any other provisions of this chapter. All special elections held at the time of a general election, as provided by Code Section 21-2-541, shall be conducted by the poll officers by the use of the same equipment and facilities, so far as practicable, as are used for such general election."; in subsection (b), inserted "primaries and special" at the beginning and "special primaries and" near the middle of the third sentence, and deleted the former last sentence, which read: "Notwithstanding any provision of this subsection to the contrary, special elections which are to be held in conjunction with the state-wide general primary or state-wide general election in 2014 shall be called at least 60 days prior to the date of such state-wide general primary or state-wide general election."; inserted "primary or special" in subparagraph (c)(1)(A); inserted "special primary or" in subparagraph (c)(1)(B), in two places in division (c)(1)(B)(i) and in five places in the undesignated language following division (c)(1)(B)(iii), inserted a comma following "state office" and "primaries and" near the end of the undesignated language following division (c)(1)(B)(iii); inserted "special primary or" near the end of subsection (d); and, in subsection (e), designated the existing provisions as paragraph (e)(1); inserted "that are not preceded by special primaries" in the first sentence in paragraph (e)(1); and added paragraph (e)(2).

The 2022 amendment, effective February 15, 2022, added division (c)(2)(B)(ii), and redesignated former divisions (c)(2)(B)(ii) and (c)(2)(B)(iii) as present divisions (c)(2)(B)(iii) and (c)(2)(B)(iv), respectively.

Cross references.

Special elections in counties and municipalities pertaining to authorization of sale of distilled spirits by the drink, § 3-4-90 et seq.

Authorization of sale of distilled spirits by private clubs, § 3-7-40.

Time for holding referendums imposing taxation, § 48-8-264.1.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

In 2022, the Georgia General Assembly passed HB 907 and HB 934, both of which contained provisions relating to dates for special elections. HB 907, codified at § 21-2-540, was signed by the Governor on February 15, 2022 (Act No. 310, Ga. L. 2022, p. 1). HB 934, codified at § 48-8-264.1, was signed by the Governor on May 2, 2022 (Act No. 752, Ga. L. 2022, p. 256). The effect of codifying both is unclear.

Administrative rules and regulations.

Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, § 183-1-8-.01.

Law reviews.

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 34-1904 are included in the annotations for this Code section.

Applicability to rerun of election. — The provisions of O.C.G.A. § 21-2-540, concerning special elections, do not apply to the rerun of an election ordered by a superior court judge based upon the sustaining of an election contest. 1984 Op. Att'y Gen. No. U84-49.

Dates controlled by general legislation. — O.C.G.A. § 21-2-540 establishes by general legislation the only appropriate dates upon which referendum elections may be held, and any contradictory local legislation passed during the same session of the General Assembly would not be operative as to the setting of such an election date. 1991 Op. Att'y Gen. U91-23.

Time period may not be varied by local Act. — A provision of a local Act requiring that a special election be held before the expiration of 29 days between the call of the election and election itself is invalid. 1980 Op. Att'y Gen. No. 80-27.

Special election to fill a vacancy must be held within a reasonable time, in the absence of a specific time limit. 1969 Op. Att'y Gen. No. 69-514.

Vacancy in office existing for six years can be filled by special election. — A vacancy in the office of justice of the peace (now magistrate), notwithstanding the fact that it has existed for some six years, can lawfully be filled by the call of a special election. 1967 Op. Att'y Gen. No. 67-435.

Probate judge calls special primary. — While the Georgia Election Code does not specify the exact method of calling a special primary, the judge of the probate court is the officer generally having jurisdiction of primaries and the judge is the proper person to call a special primary. 1970 Op. Att'y Gen. No. U70-128.

It is possible to hold a special primary at the same time as the general primary. 1970 Op. Att'y Gen. No. U70-120.

School bond election called by county education board may be held concurrently with general election. 1965-66 Op. Att'y Gen. No. 65-9.

Former liquor referendum provision controls. — In the event of a conflict between former Code 1933, §§ 58-1003, and 34-806 (see now O.C.G.A. § 21-2-540), concerning the date for holding a liquor referendum, former Code 1933, § 58-1003 controlled. 1979 Op. Att'y Gen. No. 79-23.

Applicable time period. — Thirty-days (now 29-days) provision of this section should be followed notwithstanding the shorter time periods prescribed by pre-1964 laws as to certain offices. 1968 Op. Att'y Gen. No. 68-426.

Listing of party affiliation on ballot. — A candidate in an election may not list

a party affiliation on the ballot unless the candidate has been nominated in a primary or unless the candidate falls within certain statutory exceptions to this rule. 1970 Op. Att'y Gen. No. U70-120.

Filling unexpired term of Commissioner of Labor. — Since the Commissioner of Labor is routinely elected at the same time as the Governor and holds his or her office for the same term, an election which must be held to fill the balance of the unexpired term after the Commissioner withdraws is one "that arises from some exigency or special need outside the usual routine," which would be categorized as a "special election" under Georgia law. The Georgia Election Code certainly authorizes, but does not require, a special primary in this situation. 1992 Op. Att'y Gen. No. 92-11.

Houston County. — Where the local law creating the board of commissioners for Houston County, as amended, provides that, with regard to vacancies occurring more than one year prior to the expiration of the term of office, the vacancy "shall be filled by a special election called by the election superintendent of Houston County in the same manner as in the case to fill vacancies in other county offices . . .," the general law relating to the filling of a vacancy on the county commission is not applicable, and the special election to fill the vacancy in the office of county commissioner should be conducted pursuant to the general special election provisions of the Georgia Election Code, O.C.G.A. §§ 21-2-540 and 21-2-541, as is the case with vacancies in other county offices where there is no specific provision which applies. 1990 Op. Att'y Gen. No. U90-9.

Vacancies in offices of mayor and council members for City of Willacoochee. — Vacancies in the offices of mayor and council members for the City of Willacoochee should be filled by special election held on a statutorily authorized date and not by appointment of the remaining members of the city council. 2008 Op. Att'y Gen. No. U2008-3.

Prospective resignation of member of Congress does not become effective until the date named therein and no writ of election to fill the vacancy may issue until that date. 1945-47 Ga. Op. Att'y Gen. 241 (decided under former Code 1933, § 34-1904).

RESEARCH REFERENCES

Am. Jur. 2d.
25 Am. Jur. 2d, Elections, § 4
26 Am. Jur. 2d, Elections, § 270 et seq.
C.J.S.
29 C.J.S., Elections, §§ 144 et seq., 212.
ALR.
Validity of special election as affected by publication or dissemination of matter or information, extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 A.L.R. 1142.

21-2-541. Holding of special primary or special election at time of general primary or general election.

(a) A special primary or election may be held at the time of a general primary or election.

(b) If the times specified for the closing of the registration list for a special primary or special election are the same as those for a general primary or general election, the candidates and questions in such special primary or special election shall be included on the ballot for such general primary or general election. In such an instance, the name of the office and the candidates in such special primary or special election shall appear on the ballot in the position where such names

would ordinarily appear if such contest was a general primary or general election.

History.

Code 1933, § 34-807, enacted by Ga. L. 1973, p. 174, § 1; Ga. L. 1975, p. 808, § 2; Ga. L. 1979, p. 955, § 3; Ga. L. 1996, p. 166, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2021, p. 14, § 44/SB 202.

The 2021 amendment, effective March 25, 2021, in subsection (b), inserted "special" preceding "election" near the beginning and end of the first sentence, inserted "general" preceding "election" near the middle and end of the first sentence, and inserted "special primary or" near the middle and "general" at the end.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Special election may be held on day of general election. — A special election may be held on the day of the general election only if the general election deadlines for qualification by candidates and voter registration are met. 1974 Op. Att'y Gen. No. 74-130.

Referendum and primary may be held on same day. — A tax referendum may be held on the same day as a general

primary so long as a separate special election ballot is utilized. 1978 Op. Att'y Gen. No. 78-29.

Filling unexpired term of Commissioner of Labor. — Since the Commissioner of Labor is routinely elected at the same time as the Governor and holds his or her office for the same term, an election which must be held to fill the balance of the unexpired term after the Commissioner withdraws is one "that arises from some exigency or special need outside the usual routine," which would be categorized as a "special election" under Georgia law. The Georgia Election Code certainly authorizes, but does not require, a special primary in this situation. 1992 Op. Att'y Gen. No. 92-11.

Houston County. — Where the local law creating the board of commissioners for Houston County, as amended, provides that, with regard to vacancies occurring more than one year prior to the expiration of the term of office, the vacancy "shall be filled by a special election called by the election superintendent of Houston County in the same manner as in the case to fill vacancies in other county offices . . .," the general law relating to the filling of a vacancy on the county commission is not applicable, and the special election to fill the vacancy in the office of county commissioner should be conducted pursuant to the general special election provisions of the Georgia Election Code, O.C.G.A. §§ 21-2-540 and 21-2-541, as is the case with vacancies in other county offices where there is no specific provision which applies. 1990 Op. Att'y Gen. No. U90-9.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 270, 303.

C.J.S.
29 C.J.S., Elections, § 144 et seq.

21-2-541.1. Terms for all municipal offices elected at general municipal elections.

All municipal offices elected at general municipal elections shall be for terms of four years unless otherwise provided by local law in accordance with Code Section 21-2-541.2. Unless otherwise provided for by the municipal charter, municipal officeholders shall be sworn in at their first organizational meeting of the new year and will hold office until their successors are duly elected and qualified and take said oath of office.

History.
Code 1981, § 21-2-541.1, enacted by Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 45.

21-2-541.2. Providing by local law for terms of office.

Notwithstanding Code Section 1-3-11 or any other provision of this chapter, the General Assembly is authorized to provide by local law:

(1) For terms of two years for municipal offices, with the local law designating the offices to be elected and the time periods covered by such terms for each office;

(2) For municipal offices to change from concurrent terms to staggered terms or from staggered terms to concurrent terms, with the local law designating the terms for each office;

(3) For such terms to be staggered terms, with the local law designating the terms for each office;

(4) For general municipal elections to fill such offices to be held on the Tuesday next following the first Monday in November in even-numbered years and on such day biennially thereafter and on the Tuesday next following the first Monday in November in odd-numbered years and on such day biennially thereafter;

(5) For municipal offices elected pursuant to a prior local law authorized by this Code section to change to terms of office of four years, with the local law designating the offices to be elected and the time periods covered by such terms for each office;

(6) For general municipal elections to fill such offices to be held on the Tuesday next following the first Monday in November in any year during the first six years immediately following the enactment of a local law pursuant to this Code section as necessary for the purpose of changing the election and terms of any such municipal offices to conform to this Code section;

(7) For initial terms of one, two, three, or four years as necessary to change the terms of such offices to four-year concurrent or staggered terms of office; and

(8) Except as authorized in paragraph (6) of this Code section, for general municipal elections to be held on the Tuesday next following the first Monday in November of any odd-numbered year.

History.
Code 1981, § 21-2-541.2, enacted by Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 21-3-60 are included in the annotations for this Code section.

Five-year term for officer elected in 1992. — The intent of former Code Section 21-3-60 was to set a five-year term of office for those municipal officers elected in 1992 and the provision applied to the issue of holding a special election to fill a city council vacancy. City of E. Point v. League of Women Voters of Atlanta-Fulton County, Inc., 267 Ga. 112, 475 S.E.2d 598 (decided under former § 21-3-60).

21-2-542. Special primary and special election for United States senator vacancy; temporary appointment by Governor.

Whenever a vacancy shall occur in the representation of this state in the Senate of the United States, such vacancy shall be filled for the unexpired term by the vote of the electors of the state at a special

primary to be held at the time of the next general primary followed by a special election to be held at the time of the next November state-wide general election, occurring at least 40 days after the occurrence of such vacancy; and it shall be the duty of the Governor to issue his or her proclamation for such special primary and special election. Until such time as the vacancy shall be filled by an election as provided in this Code section, the Governor may make a temporary appointment to fill such vacancy.

History.

Ga. L. 1913, p. 135; Code 1933, § 34-2403; Code 1933, § 34-803, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2021, p. 14, § 45/SB 202.

The 2021 amendment, effective March 25, 2021, in the first sentence, inserted "a special primary to be held at the time of the next general primary followed by" near the middle and inserted "special primary and special" near the end.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election prob-

lems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 270.

C.J.S.
29 C.J.S., Elections, § 144 et seq.

ALR.
Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

Law reviews.
For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-543. Special election for United States congressional representative vacancy.

Whenever a vacancy shall occur or exist in the office of Representative in the United States Congress from this state the Governor shall issue, within ten days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy, which election shall be held on the date named in the writ, which shall not be less than 30 days after its issuance. Upon receiving the writ of election from the Governor, the Secretary of State shall then transmit the writ of election to the superintendent of each county involved and shall publish the call of the election.

History.
Code 1933, § 34-804, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1984, p. 638, § 1; Ga. L. 1998, p. 295, § 1.

Administrative rules and regulations.
Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, § 183-1-8-.01.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 270.

C.J.S.
29 C.J.S., Elections, § 144 et seq.

ALR.
Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

Construction and application of vacancies in house of representatives clause of United States Constitution, U.S. Const. Art. I, § 2, cl. 4, and state provisions concerning such elections, 62 A.L.R.6th 143.

21-2-543.1. Procedures for filling vacancies in federal House of Representatives.

In extraordinary circumstances, where the Speaker of the House of Representatives in the United States Congress announces that there are more than 100 vacancies in the federal House of Representatives, the Governor shall issue, within five days after the speaker announces that such number of vacancies exists, a writ of election to the Secretary of State for a special election to fill any such vacancy from this state, which election shall be held on the date named in the writ, which shall not be more than 49 days after the speaker announces that such number of vacancies exists.

History.
Code 1981, § 21-2-543.1, enacted by Ga. L. 2008, p. 781, § 15/HB 1112; Ga. L. 2020, p. 493, § 21/SB 429.

21-2-544. Special election for General Assembly vacancy.

Whenever a vacancy shall occur or exist in either house of the General Assembly, such vacancy shall be filled as follows:

(1) If such vacancy shall occur during a session of the General Assembly, the Governor shall issue, within ten days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance;

(2) Except as provided in paragraph (4) of this Code section, if such vacancy shall occur after the conclusion of the regular session which is held during the first year of the term of office of members of the General Assembly, but more than 60 days prior to the Tuesday following the first Monday in November of the first year of the term of office of members of the General Assembly, the Governor may issue at any time but no later than 60 days prior to the Tuesday following the first Monday in November of the first year of the term of office of members of the General Assembly a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held not fewer than 30 days after its issuance nor later than 60 days prior to the Tuesday following the first Monday in November of the first year of the term of office of members of the General Assembly;

(3) If such vacancy shall occur after the conclusion of the regular session of the General Assembly held during the first year of the term of office of members of the General Assembly during the period beginning 60 days prior to the Tuesday following the first Monday in November of such year and ending on the day prior to the beginning of the regular session of the General Assembly held during the second year of the term of office of members of the General Assembly, the Governor shall issue, within ten days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance;

(4) If such vacancy shall occur following the election of a member of the General Assembly but prior to such member taking office, such vacancy shall be filled in accordance with Code Section 21-2-504, but such election shall be called within ten days of such vacancy and shall be held not fewer than 30 nor more than 60 days following the date of such call;

(5) If such vacancy shall occur following the conclusion of the regular session of the General Assembly during the second year of the term of office of members of the General Assembly, the issuance of a

writ of election to fill such vacancy shall be in the discretion of the Governor except as otherwise provided in paragraph (6) of this Code section and if the Governor chooses to issue such writ of election to fill such vacancy, such election shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance; or

(6)(A) If such vacancy shall exist at a time when the members of the General Assembly shall be required to meet in special session, the Governor shall issue, within two days after the calling of an extraordinary session of the General Assembly during the existence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance; or

(B) If such vacancy shall occur after the issuance by the Governor of a call for an extraordinary session of the General Assembly, but prior to the conclusion of such extraordinary session, the Governor shall issue, within five days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance.

Upon receiving the writ of election from the Governor, the Secretary of State shall then transmit the writ of election to the superintendent of each county involved and shall publish the call of the election.

History.
Code 1933, § 34-805, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 3, § 1; Ga. L. 1970, p. 88, § 1; Ga. L. 1984, p. 638, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 16; Ga. L. 2012, p. 995, § 43/SB 92.

Administrative rules and regulations.
Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, § 183-1-8-.01.

Law reviews.
For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 144 et seq.

ALR.
Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

21-2-545. Procedure as to unopposed candidates.

Any other provision of law to the contrary notwithstanding, in the event there is no opposed candidate in a precinct in a special primary,

no special primary shall be held in such precinct. The proper officials of the unopposed candidate's political party shall certify him or her as the party nominee for the office involved for the purpose of having his or her name placed upon the special election ballots or ballot labels. Where feasible, the superintendent shall provide notice reasonably calculated to inform the affected electorate that no special primary election is to be conducted. Each such unopposed candidate shall be deemed to have voted for himself or herself. The superintendent shall certify any such unopposed candidate as nominated in the same manner as he or she certifies other candidates nominated pursuant to Code Section 21-2-493.

History.
Code 1981, § 21-2-545, enacted by Ga. L. 1984, p. 1, § 15; Ga. L. 1998, p. 295, § 1.

21-2-546. Filling chief judge vacancies in civil and magistrate courts.

Notwithstanding any other law to the contrary, in each county in this state in which there is a civil and magistrate court established by local Act of the General Assembly, vacancies in the office of chief judge of such court caused by death, retirement, resignation, or otherwise shall be filled by the appointment of a qualified person by the Governor to serve until a successor is duly elected and qualified and until January 1 of the year following the next general election which is more than six months following such person's appointment.

History.
Code 1981, § 21-2-546, enacted by Ga. L. 2021, p. 14, § 46/SB 202.
Effective date.
This Code section became effective March 25, 2021.
Editor's notes.
Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across

the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to

vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

ARTICLE 15

MISCELLANEOUS OFFENSES

RESEARCH REFERENCES

ALR.

Punishment of election officers for contempt, 64 A.L.R. 1019.

Acts of others upon which charges of bribery or improper influencing of voters are predicated as chargeable to candidate, for purpose of disqualifying him for the office to which he is elected, 121 A.L.R. 601.

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-560. Making of false statements generally.

Except as otherwise provided in Code Section 21-2-565, any person who shall make a false statement under oath or affirmation regarding any material matter or thing relating to any subject being investigated, heard, determined, or acted upon by any public official, in accordance with this chapter, shall be guilty of a misdemeanor.

History.

Ga. L. 1894, p. 115, § 13; Penal Code 1895, § 625; Penal Code 1910, § 660; Code 1933, § 34-9901; Code 1933, § 34-1901, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Cross references.

False swearing generally, § 16-10-71.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-560 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

21-2-561. False registration.

Any person who:

(1) Registers as an elector knowing that such elector does not possess the qualifications required by law;

(2) Registers as an elector under any other name than the elector's own name; or

(3) Knowingly gives false information when registering as an elector

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.
Ga. L. 1894, p. 115, § 13; Penal Code 1895, § 625; Penal Code 1910, § 660; Code 1933, § 34-9901; Code 1933, § 34-1902, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1994, p. 1443, § 11; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 3/SB 40.

JUDICIAL DECISIONS

Applicability. — This section was applicable in the case of one who removed disqualification and became a legal voter. Drake v. Drewry, 112 Ga. 308, 37 S.E. 432, 1900 Ga. LEXIS 134 (1900) see also Cole v. McClendon, 109 Ga. 183, 34 S.E. 384, 1899 Ga. LEXIS 606 (1899).

OPINIONS OF THE ATTORNEY GENERAL

Changing racial designation. — Person may change the racial designation given on that voter's registration card without penalty. 1977 Op. Att'y Gen. No. 77-28.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 448.

C.J.S.
29 C.J.S., Elections, §§ 572, 573.

21-2-562. Fraudulent entries; unlawful alteration or destruction of entries; unlawful removal of documents; neglect or refusal to deliver documents.

(a) Any person who willfully:

(1) Inserts or permits to be inserted any fictitious name, false figure, false statement, or other fraudulent entry on or in any registration card, electors list, voter's certificate, affidavit, tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot, or other record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election;

(2) Alters materially or intentionally destroys any entry which has been lawfully made therein; or

(3) Takes or removes any book, affidavit, return, account, ballot, or other document or record from the custody of any person having

lawful charge thereof, in order to prevent the same from being used or inspected or copied as required or permitted by this chapter

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

(b) Any person who willfully neglects or refuses, within the time and in the manner required by this chapter, to deliver any such document described in subsection (a) of this Code section into the custody of the officers who are required by this chapter to use or keep the same shall be guilty of a misdemeanor.

History.
Ga. L. 1958, p. 269, § 46; Code 1933, § 34-1905, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1977, p. 313, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 4/SB 40; Ga. L. 2010, p. 914, § 26/HB 540.

Cross references.
Fraud generally, § 23-2-50 et seq. and T. 51, C. 6.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-562 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, §§ 448, 449.

C.J.S.
29 C.J.S., Elections, §§ 568, 572 et seq., 575 et seq.

21-2-563. Improper signing or alteration of nomination petitions or affidavits.

Any person who knowingly and willfully:

(1) Signs any nomination petition without having the qualifications prescribed by this chapter;

(2) Sets any false statement opposite the signature on a nomination petition;

(3) Signs more nomination petitions than permitted by this chapter;

(4) Makes a false statement in any affidavit required by this chapter to be appended to or to accompany a nomination petition;

(5) Signs any name not his or her own to any nomination petition; or

(6) Materially alters any nomination petition without the consent of the signers

shall be guilty of a felony.

History.
Code 1933, §§ 34-1908, 34-1909, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

ALR.
Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition, 100 A.L.R. 1308.

21-2-564. Willful destruction, fraudulent filing, or suppression of nomination materials.

Any person who willfully makes any false nomination certificate or defaces or destroys any nomination petition, nomination certificate, or nomination paper, or letter of withdrawal, knowing the same, or any part thereof, to be made falsely, or suppresses any nomination petition, nomination certificate, or nomination paper or any part thereof which has been duly filed shall be guilty of a felony.

History.
Code 1933, § 34-1910, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2020, p. 493, § 21/SB 429.

RESEARCH REFERENCES

ALR.
Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition, 100 A.L.R. 1308.

21-2-565. Making of false statements in connection with filing notice of candidacy or qualifying as candidate for party nomination; duties of district attorney as to violations.

(a) Any person knowingly making any false statement in connection with filing a notice of candidacy under Code Section 21-2-132 or in connection with qualifying as a candidate for party nomination under Code Section 21-2-153 commits the offense of false swearing.

(b) The district attorney of any judicial circuit or of the county in which all or the greater portion of any municipality is situated shall furnish all investigative personnel and facilities to the Secretary of State, the superintendent, or political party, as the case may be, as needed to determine the accuracy and correctness of all facts set forth in the affidavits filed pursuant to Code Sections 21-2-132 and 21-2-153

and shall commence prosecution of any person when it appears that a violation of this Code section has occurred.

(c) Where proper venue of any such prosecution would be in another county, the district attorney whose office conducted the investigation shall forward all evidence and other data to the district attorney of the county where venue is proper; and prosecution shall be commenced by such official.

History.
Code 1933, § 34-1901.1, enacted by Ga. L. 1974, p. 522, § 1; Ga. L. 1976, p. 205, § 2; Ga. L. 1998, p. 295, § 1.

Cross references.
False swearing generally, § 16-10-71.

JUDICIAL DECISIONS

Sufficiency of indictment. — Indictment for "making false statements in notice of candidacy" was sufficient even though it did not expressly allege that defendant filed an affidavit at the time of qualifying; the indictment did expressly allege that defendant knowingly and willfully made a false statement about being a resident for one year in the district and the defendant's eligibility to hold office in connection with qualifying as a candidate. State v. Kindberg, 211 Ga. App. 117, 438 S.E.2d 116, 1993 Ga. App. LEXIS 1436 (1993), cert. denied, No. S94C0379, 1994 Ga. LEXIS 253 (Ga. Jan. 28, 1994).

Classification of offense. — Jolley v. Grantham, 206 Ga. App. 100, 424 S.E.2d 362 (1992), to the extent that it states that the offense of false swearing under O.C.G.A. § 21-2-565 is punishable as a misdemeanor, rather than as a felony, is disapproved. Hogan v. State, 316 Ga. App. 708, 730 S.E.2d 178, 2012 Ga. App. LEXIS 637 (2012).

Sentence affirmed because the offense constituted a felony. — Defendant was not entitled to relief from the defendant's sentence for false swearing, in violation of O.C.G.A. § 21-2-565, because the rule of lenity did not apply in that there was no uncertainty as to the applicable sentence for the crime, and the imposition of a five-year sentence was appropriate and within the sentencing range, under O.C.G.A. § 16-10-71, for the offense, which constituted a felony under O.C.G.A. § 16-1-3. Hogan v. State, 316 Ga. App. 708, 730 S.E.2d 178, 2012 Ga. App. LEXIS 637 (2012).

21-2-566. Interference with primaries and elections generally.

Any person who:

(1) Willfully prevents or attempts to prevent any poll officer from holding any primary or election under this chapter;

(2) Uses or threatens violence in a manner that would prevent a reasonable poll officer or actually prevents a poll officer from the execution of his or her duties or materially interrupts or improperly and materially interferes with the execution of a poll officer's duties;

(3) Willfully blocks or attempts to block the avenue to the door of any polling place;

(4) Uses or threatens violence in a manner that would prevent a

reasonable elector from voting or actually prevents any elector from voting;

(5) Willfully prepares or presents to any poll officer a fraudulent voter's certificate not signed by the elector whose certificate it purports to be;

(6) Knowingly deposits fraudulent ballots in the ballot box;

(7) Knowingly registers fraudulent votes upon any voting machine; or

(8) Willfully tampers with any electors list, voter's certificate, numbered list of voters, ballot box, voting machine, direct recording electronic (DRE) equipment, electronic ballot marker, or tabulating machine

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.

Code 1933, § 34-1924, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1985, p. 206, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 61; Ga. L. 2007, p. 536, § 5/SB 40; Ga. L. 2008, p. 781, § 16/HB 1112; Ga. L. 2019, p. 7, § 44/HB 316.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2019, a period was deleted at the end of paragraph (8).

Law reviews.

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Penal Code 1910, § 660 are included in the annotations for this Code section.

Primary elections content of section 660, subsection 6, Penal Code 1910, which provided that any person who shall deposit a ballot at any election in any name other than that person's own name, as it appears on the list of registered voters prescribed by law, shall be guilty of a misdemeanor. George v. State, 18 Ga. App. 753, 90 S.E. 493, 1916 Ga. App. LEXIS 1242 (1916); Mark v. State, 18 Ga. App. 754, 90 S.E. 493, 1916 Ga. App. LEXIS 1243 (1916) (decided under former Penal Code 1910, § 660).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 454.

C.J.S.

29 C.J.S., Elections, §§ 568, 572, 575 et seq.

21-2-567. Intimidation of electors.

(a) Any person who uses or threatens to use force and violence, or acts in any other manner to intimidate any other person, to:

(1) Vote or refrain from voting at any primary or election, or to vote or refrain from voting for or against any particular candidate or question submitted to electors at such primary or election; or

(2) Place or refrain from placing his or her name upon a register of electors

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

(b) As used in this Code section, the term "acts in any other manner to intimidate" means to undertake or pursue a knowing and willful course of conduct which causes emotional distress by placing another person in reasonable fear for such person's safety or for the safety of another person and which serves no legitimate purpose.

History.
Code 1933, § 34-1934, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 6/SB 40; Ga. L. 2008, p. 781, § 17/HB 1112.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — An offense under O.C.G.A. § 21-2-567 would be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 454.

C.J.S.
29 C.J.S., Elections, § 576.

21-2-568. Entry into voting compartment or booth while another voting; interfering with elector; inducing elector to reveal or revealing elector's vote; influencing voter while assisting.

(a) Any person who knowingly:

(1) Goes into the voting compartment or voting machine booth while another is voting or marks the ballot or registers the vote for another, except in strict accordance with this chapter;

(2) Interferes with any elector marking his or her ballot or registering his or her vote;

(3) Attempts to induce any elector to show how he or she marks or has marked his or her ballot;

(4) Discloses to anyone how another elector voted, without said elector's consent, except when required to do so in any legal proceeding; or

(5) Accepts an absentee ballot from an elector for delivery or return to the board of registrars except as authorized by subsection (a) of Code Section 21-2-385

shall be guilty of a felony.

(b) Any person who, while giving lawful assistance to another, attempts to influence the vote of the elector he or she is assisting or marks a ballot or registers a vote in any other way than that requested by the voter he or she is assisting shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.

Code 1933, § 34-1926, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1989, p. 1090, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 7/SB 40; Ga. L. 2008, p. 781, § 18/HB 1112; Ga. L. 2010, p. 914, § 27/HB 540; Ga. L. 2021, p. 14, § 47/SB 202.

The 2021 amendment, effective March 25, 2021, in paragraph (a)(3), deleted "before depositing his or her ballot" following "induce any elector" and deleted "or" at the end; inserted "; or" at the end of paragraph (a)(4); and added paragraph (a)(5).

Cross references.

Conduct by electors within voting compartment or booth, and as to campaign activities within vicinity of polling place, §§ 21-2-413, 21-2-414.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days

will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant

modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-568 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

C.J.S.

29 C.J.S., Elections, §§ 568 et seq., 581 et seq.

21-2-568.1. Intentional observation of voting.

(a) Except while providing authorized assistance in voting under Code Section 21-2-409 and except for children authorized to be in the enclosed space under subsection (f) of Code Section 21-2-413, no person shall intentionally observe an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting.

(b) Any person who violates the provisions of subsection (a) of this Code section shall be guilty of a felony.

History.

Code 1981, § 21-2-568.1, enacted by Ga. L. 2021, p. 14, § 48/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise

dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

21-2-568.2. Photographic and other electronic monitoring of ballots prohibited.

(a) It shall be illegal for any person to use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones, except as authorized by law, to:

(1) Photograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector's votes are displayed on such electronic ballot marker; or

(2) Photograph or record a voted ballot.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.

Code 1981, § 21-2-568.2, enacted by Ga. L. 2021, p. 14, § 48/SB 202.

Effective date.

This Code section became effective March 25, 2021.

Editor's notes.

Ga. L. 2021, p. 14, § 1/SB 202, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Election Integrity Act of 2021.'"

Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly, provides: "The General Assembly finds and declares that:

"(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

"(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

"(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to re-

duce the burden on election officials and boost voter confidence;

"(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

"(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

"(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there is no political advantage conferred by preferring certain counties over others in the distribution of funds;

"(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

"(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

"(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

"(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

"(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

"(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

"(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

"(14) Ballot duplication for provisional ballots and other purposes places a heavy

burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

"(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

"(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

"(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it 'easy to vote and hard to cheat,' applying the lessons learned from conducting an election in the 2020 pandemic."

Law reviews.

For article, "SB 202: Revisions to Georgia's Election and Voting Procedures," see 38 Ga. St. U.L. Rev. 105 (2021).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Misdemeanor offenses arising under O.C.G.A. § 21-2-568.2 are offenses for which those charged are to be fingerprinted. 2021 Op. Att'y Gen. No. 21-1.

21-2-569. Interfering with poll officers.

Any person, including any poll officer, who willfully prevents any poll officer from performing the duties imposed on him or her by this chapter shall be guilty of a felony.

History.

Code 1933, § 34-1906, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

RESEARCH REFERENCES

C.J.S.

29 C.J.S., Elections, §§ 575, 576.

21-2-570. Giving or receiving, offering to give or receive, or participating in the giving or receiving of money or gifts for registering as a voter, voting, or voting for a particular candidate.

Any person who gives or receives, offers to give or receive, or participates in the giving or receiving of money or gifts for the purpose of registering as a voter, voting, or voting for a particular candidate in any primary or election shall be guilty of a felony.

History.
Laws 1840, Cobb's 1851 Digest, p. 819; Code 1863, § 4443; Code 1868, § 4485; Code 1873, § 4569; Ga. L. 1880-81, p. 129, § 1; Code 1882, § 4569; Penal Code 1895, § 629; Ga. L. 1904, p. 97, § 1; Ga. L. 1905, p. 111, § 1; Ga. L. 1906, p. 46, § 1; Penal Code 1910, §§ 665, 675; Code 1933, §§ 34-9907, 34-9926; Code 1933, § 34-1933, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 18.

Cross references.
Penalty for selling of public office, § 45-11-2.

Administrative rules and regulations.
Giving or receiving, offering to give or receive, or participating in the giving or receiving of money or gifts for registering as a voter, voting, or voting for a particular candidate, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Penalties, § 183-1-19-.01.

JUDICIAL DECISIONS

This section was not void for vagueness or overbreadth. King v. State, 244 Ga. 536, 261 S.E.2d 333, 1979 Ga. LEXIS 1330 (1979).

Buying or selling votes is immoral and note given in such transaction is void. Exchange Nat'l Bank v. Henderson, 139 Ga. 260, 77 S.E. 36, 1913 Ga. LEXIS 398 (1913).

For sufficiency of an indictment and evidence in a prosecution under this section, see Lepinsky v. State, 7 Ga. App. 285, 66 S.E. 965, 1910 Ga. App. LEXIS 242 (1910).

For sufficiency of indictment, see Cohen, Murrah & Pierce v. State, 104 Ga. 734, 30 S.E. 932, 1898 Ga. LEXIS 415 (1898).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 450.

C.J.S.
29 C.J.S., Elections, §§ 579, 580.

ALR.
Acts of others upon which charges of bribery or improper influencing of voters are predicated as chargeable to candidate, for purpose of disqualifying him for the office to which he is elected, 121 A.L.R. 601.

21-2-571. Voting by unqualified elector or giving false information.

Any person who votes or attempts to vote at any primary or election, knowing that such person does not possess all the qualifications of an elector at such primary or election, as required by law, or who votes or attempts to vote at any primary in violation of Code Section 21-2-223 or who knowingly gives false information to poll officers in an attempt to vote in any primary or election shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.
Code 1933, § 34-1929, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1994, p. 1443, § 12; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 8/SB 40.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 448.

C.J.S.
29 C.J.S., Elections, § 572.

21-2-572. Repeat voting in same primary or election.

Any person who votes in more than one precinct in the same primary or election or otherwise fraudulently votes more than once at the same primary or election shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.
Laws 1833, Cobb's 1851 Digest, p. 819; Laws 1840, Cobb's 1851 Digest, p. 819; Code 1863, § 4442; Code 1868, § 4484; Code 1873, § 4568; Code 1882, § 4568; Penal Code 1895, § 627; Penal Code 1910, § 663; Code 1933, § 34-9904; Code 1933, § 34-1930, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 9/SB 40.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 448.

C.J.S.
29 C.J.S., Elections, § 572.

21-2-573. Absentee voting by unqualified elector.

Any person who votes or attempts to vote by absentee ballot at any primary or election under Article 10 of this chapter who knows that he or she is not qualified to vote shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.
Code 1933, § 34-1932, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 10/SB 40; Ga. L. 2008, p. 781, § 19/HB 1112.

JUDICIAL DECISIONS

Construction. — O.C.G.A. § 21-2-573 has never defined who is eligible to vote because the phrase "is not qualified to vote" encompasses persons who do not meet the qualifications to vote at all in the relevant election, O.C.G.A. § 21-2-216 (setting forth qualifications of electors), apart from whether the electors meet whatever qualifications might have existed for voting by absentee ballot; the General Assembly clarified that any elector can seek to vote by absentee ballot without having a reason, yet the legislature did not amend § 21-2-573, indicating that electors can still violate § 21-2-573 if the electors are not qualified to vote at all. Spalding County Bd. of Elections v. McCord, 287 Ga. 835, 700 S.E.2d 558, 2010 Ga. LEXIS 644 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-573 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 448.

C.J.S.
29 C.J.S., Elections, § 572.

21-2-574. Unlawful possession of ballots.

Any person, other than an officer charged by law with the care of ballots or a person entrusted by any such officer with the care of the same for a purpose required by law, who has in his or her possession outside the polling place any official ballot shall be guilty of a felony.

History.
Ga. L. 1949, p. 1291, § 2A; Code 1933, § 34-1912, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 28/HB 540.

OPINIONS OF THE ATTORNEY GENERAL

Possession of voter's absentee ballot. — The mere possession of another voter's absentee ballot does not constitute unlawful possession of an absentee ballot under either O.C.G.A. § 21-2-385(a) or O.C.G.A. § 21-2-574. 2016 Op. Att'y Gen. No. 16-2.

21-2-575. Counterfeit ballots or ballot labels; sample or facsimile ballots.

(a) Any person who makes, constructs, or has in his or her possession any counterfeit of an official ballot or ballot label shall be guilty of a felony.

(b) This Code section shall not be applied to facsimile ballots printed and published as an aid to electors in any newspaper generally and regularly circulated within this state, so long as such facsimile ballot is at least 25 percent larger or smaller than the official ballot of which it is a facsimile. This Code section shall not be applied to any sample or facsimile ballots or ballot labels obtained under Code Section 21-2-400. Nothing in this Code section shall be so construed as to prohibit the procurement and distribution of reprints of the said newspaper printings; nor shall it be so construed as to prohibit the preparation and distribution by election officials of facsimile ballots and ballot labels or portions thereof, provided that they are of a different color and at least 25 percent larger or smaller than the official ballots or ballot labels.

(c) Nothing in this Code section shall be so construed as to prohibit any person from procuring and distributing reprints or portions of

reprints of any sample or facsimile ballots or ballot labels as provided in Code Section 21-2-400, provided such reprints or portions of reprints are of a different color and at least 25 percent larger or smaller than the official ballots or ballot labels.

History.
Ga. L. 1949, p. 1291, § 2A; Code 1933, § 34-1913, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 25; Ga. L. 1980, p. 1256, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 29/HB 540.

OPINIONS OF THE ATTORNEY GENERAL

Distribution of sample ballots. — Ordinary (now superintendent) does not have authority to distribute electorate sample ballots prior to the next general election; even if such authority were contained in the Georgia Election Code, it is extremely doubtful whether public funds could be used. 1968 Op. Att'y Gen. No. 68-4.

Facsimile ballots may be printed in general circulation newspaper. — While the printing or possession of a counterfeit of an official ballot constitutes a felony, facsimile ballots may be printed in any newspaper generally circulated within the state as an aid to the electors. 1965-66 Op. Att'y Gen. No. 66-135.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 578.

21-2-576. Destroying, defacing, or delaying delivery of ballots.

Any person who willfully destroys or defaces any ballot or willfully delays the delivery of any ballots shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1914, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 30/HB 540.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-576 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 575, 576.

21-2-577. Improper removal of ballots from book of official ballots.

Any person removing any ballot from any book of official ballots,

except in the manner provided by this chapter, shall be guilty of a misdemeanor.

History. Code 1933, § 34-1931, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-577 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

21-2-578. Unfolding, opening, or prying into ballots.

Any person who, before any ballot is deposited in the ballot box as provided by this chapter, willfully unfolds, opens, or pries into any such ballot with the intent to discover the manner in which the same has been marked shall be guilty of a misdemeanor.

History. Code 1933, § 34-1923, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 31/HB 540.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-578 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

21-2-579. Fraudulently allowing ballot or voting machine to be seen; casting unofficial ballot; receiving unauthorized assistance in voting.

Any voter at any primary or election who:

(1) Allows his or her ballot or the face of the voting machine used by him or her to be seen by any person with the apparent intention of letting it be known for a fraudulent purpose how he or she is about to vote;

(2) Casts or attempts to cast any other than the official ballot which has been given to him or her by the proper poll officer, or advises or procures another to do so;

(3) Without having made the affirmation under oath or declaration required by Code Section 21-2-409, or when the disability which he or she declared at the time of registration no longer exists, permits another to accompany him or her into the voting compartment or voting machine booth or to mark his or her ballot or to register his or her vote on the voting machine or direct recording electronic (DRE) equipment or use an electronic ballot marker; or

(4) States falsely to any poll officer that because of his or her inability to read the English language or because of blindness, near-blindness, or other physical disability he or she cannot mark the ballot or operate the voting machine without assistance

shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1925, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1989, p. 911, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 62; Ga. L. 2010, p. 914, § 32/HB 540; Ga. L. 2019, p. 7, § 45/HB 316.

Cross references.
Fraud generally, § 23-2-50 et seq.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-579 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 448.

C.J.S.
29 C.J.S., Elections, § 572.

21-2-580. Tampering with, damaging, improper preparation of, or prevention of proper operation of voting machines or electronic ballot markers or tabulating machines.

Any person who:

(1) Unlawfully opens, tampers with, or damages any voting machine or electronic ballot marker or tabulating machine to be used or being used at any primary or election;

(2) Willfully prepares a voting machine or an electronic ballot marker or tabulating machine for use in a primary or election in improper order for voting; or

(3) Prevents or attempts to prevent the correct operation of such electronic ballot marker or tabulating machine or voting machine

shall be guilty of a felony.

History.
Code 1933, § 34-1915, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2019, p. 7, § 46/HB 316.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

21-2-581. Unauthorized making or possession of voting machine key.

Any unauthorized person who makes or knowingly has in his or her possession a key to a voting machine to be used or being used in any primary or election shall be guilty of a felony.

History.
Code 1933, § 34-1916, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

21-2-582. Tampering with, damaging, or preventing of proper operation of direct recording electronic equipment or electronic ballot marker or tabulating machine or device.

Any person who tampers with or damages any direct recording electronic (DRE) equipment or electronic ballot marker or tabulating machine or device to be used or being used at or in connection with any primary or election or who prevents or attempts to prevent the correct operation of any direct recording electronic (DRE) equipment or electronic ballot marker or tabulating machine or device shall be guilty of a felony.

History.
Code 1933, § 34-1917, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 63; Ga. L. 2019, p. 7, § 47/HB 316.

Law reviews.
For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

21-2-582.1. Penalty for voting equipment modification.

(a) For the purposes of this Code section, the term "voting equipment" shall mean a voting machine, tabulating machine, optical scanning voting system, direct recording electronic voting system, or electronic ballot marker.

(b) Any person or entity, including, but not limited to, a manufacturer or seller of voting equipment, who alters, modifies, or changes any aspect of such voting equipment without prior approval of the Secretary of State is guilty of a felony.

History.
Code 1981, § 21-2-582.1, enacted by Ga. L. 2001, p. 230, § 17; Ga. L. 2003, p. 517, § 64; Ga. L. 2019, p. 7, § 48/HB 316.

Law reviews.
For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 394, 405.

21-2-583. Removal or destruction of election supplies or conveniences.

Any person who:

(1) Prior to any primary or election, willfully defaces, removes, or destroys any notice or list of candidates posted in accordance with this chapter;

(2) During any primary or election, willfully defaces, tears down, removes, or destroys any card of instructions, notice of penalties, or diagram printed or posted for the instruction of electors; or

(3) During any primary or election, willfully removes or destroys any of the supplies or conveniences furnished to any polling place in order to enable electors to vote or the poll officers to perform their duties

shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1918, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-583 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 575, 576.

21-2-584. Refusal or failure of manager to administer oath to poll officer; poll officer acting without being sworn; giving of false certification as to swearing of poll officer.

If any manager refuses or willfully fails to administer the oath to the poll officer in the manner required by this chapter, or if any poll officer shall knowingly act without being first duly sworn, or if any such person shall sign the written form of oath without being duly sworn, or if any manager or any other person authorized to administer oaths shall certify that any such person was sworn when he or she was not, he or she shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1907, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-584 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-585. Refusal by superintendent or his or her employee to permit public inspection of documents; removal, destruction, or alteration of documents.

(a) Any superintendent or employee of his or her office who willfully refuses to permit the public inspection or copying, in accordance with this chapter, of any general or duplicate return sheet, tally paper, affidavit, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody, or who willfully removes any such document or record from his or her office during said period, or who permits the same to be removed, except pursuant to the direction of any competent authority, shall be guilty of a misdemeanor.

(b) Any superintendent or employee of his or her office who willfully destroys or alters, or permits to be destroyed or altered, any document described in subsection (a) of this Code section during the period for which the same is required to be kept shall be guilty of a felony.

History.
Code 1933, § 34-1904, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Cross references.
Requirement that be open primary and election records to inspection by public, § 21-2-72.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-585 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 456.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-586. Refusal by Secretary of State or his or her employee to permit public inspection of documents; removal, destruction, or alteration of documents.

(a) If the Secretary of State or any employee of his or her office willfully refuses to permit the public inspection or copying, in accordance with this chapter, of any return, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody, except when in use, or willfully removes any such document or record from his or her office during such period or permits the same to be removed, except pursuant to the direction of competent authority, the Secretary of State or employee of his or her office shall be guilty of a misdemeanor.

(b) If the Secretary of State or any employee of his or her office willfully destroys, alters, or permits to be destroyed or altered any document described in subsection (a) of this Code section during the period for which the same is required to be kept in his or her office, the Secretary of State or employee of his or her office shall be guilty of a felony.

History.
Code 1933, § 34-1903, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

Cross references.
Requirement that Secretary of State open election records to inspection by public, § 21-2-51.

Opening of public records for inspection by public generally, § 50-18-70 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-586 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 456.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-587. Frauds by poll officers.

Any poll officer who willfully:

(1) Makes a false return of the votes cast at any primary or election;

(2) Deposits fraudulent ballots in the ballot box or certifies as correct a false return of ballots;

(3) Registers fraudulent votes upon any voting machine or certifies as correct a return of fraudulent votes cast upon any voting machine;

(4) Makes any false entries in the electors list;

(5) Destroys or alters any ballot, voter's certificate, or electors list;

(6) Tampers with any voting machine, direct recording electronic (DRE) equipment, electronic ballot marker, or tabulating machine or device;

(7) Prepares or files any false voter's certificate not prepared by or for an elector actually voting at such primary or election; or

(8) Fails to return to the officials prescribed by this chapter, following any primary or election, any keys of a voting machine; ballot box; general or duplicate return sheet; tally paper; oaths of poll officers; affidavits of electors and others; record of assisted voters; numbered list of voters; electors list; voter's certificate; spoiled and canceled ballots; ballots deposited, written, or affixed in or upon a voting machine; DRE, electronic ballot marker, or tabulating machine memory cards; or any certificate or any other paper or record required to be returned under this chapter

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed $100,000.00, or both.

History.
Orig. Code 1863, § 1238; Code 1868, § 1319; Code 1873, § 1292; Code 1882, § 1292; Civil Code 1895, § 74; Civil Code 1910, § 84; Code 1933, § 34-1501; Code 1933, § 34-1921, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1985, p. 206, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 65; Ga. L. 2007, p. 536, § 11/SB 40; Ga. L. 2010, p. 914, § 33/HB 540; Ga. L. 2019, p. 7, § 49/HB 316.

Cross references.
Poll officers, § 21-2-90 et seq.

Administrative rules and regulations.
Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, § 183-1-14-.07.

Law reviews.
For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 81 (2019).

JUDICIAL DECISIONS

Superintendent knowingly misstating votes. — If the number of votes was knowingly and falsely misstated by a superintendent of an election, the superintendent has failed to discharge a duty imposed by law, and the superintendent was liable to be prosecuted under the provisions of the penal Code for a misdemeanor, although this section also applied. Black v. State, 36 Ga. App. 286, 136 S.E. 334, 1927 Ga. App. LEXIS 23 (1927).

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.

C.J.S.
29 C.J.S., Elections, §§ 568 et seq., 577 et seq.

ALR.
Admissibility of parol evidence of election officials to impeach election returns, 46 A.L.R.2d 1385.

21-2-588. Premature counting of votes by poll officer.

Except as provided in Code Section 21-2-386, any poll officer who counts any votes before the close of the polls or before the last person has voted, whichever occurs later in time, on the day of any primary or election shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1939, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 34/HB 540.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-588 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.
C.J.S.
29 C.J.S., Elections, § 573.
ALR.
Admissibility of parol evidence of election officials to impeach election returns, 46 A.L.R.2d 1385.

21-2-589. Willful omissions by poll officers.

Any poll officer who willfully:

(1) Fails to file the voter's certificate of any elector actually voting at any primary or election;

(2) Fails to record voting information as required by this chapter; or

(3) Fails to insert in the numbered list of voters the name of any person actually voting

shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1922, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-589 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.
C.J.S.
29 C.J.S., Elections, § 573.

21-2-590. Poll officer permitting unregistered or unqualified persons to vote; refusing to permit registered and qualified persons to vote; unlawful rendering of assistance.

Any poll officer who:

(1) Permits any unregistered person to vote at any primary or election, knowing such person is unregistered;

(2) Permits any person registered as an elector to vote, knowing that such person is not qualified to vote, whether or not such person has been challenged;

(3) Refuses to permit any duly registered and qualified person to vote at any primary or election, with the knowledge that such person is entitled to vote; or

(4) Renders assistance to an elector in voting in violation of Code Section 21-2-409, or knowingly permits another person to render such assistance in violation of Code Section 21-2-409

shall be guilty of a felony.

History.
Code 1933, § 34-1920, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 12/SB 40.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1873, § 1283 and former Code 1910, § 77 are included in the annotations for this Code section.

Purpose. — This section was not intended to make legal the rejection by the election managers of persons legally entitled to vote. Its purpose was to protect the election managers from liability when they did not knowingly reject the votes of persons who proposed to vote, and to safeguard pro tanto the right of persons entitled to register and vote from being prohibited so to do by the managers when these officers knew that the prohibition was illegal. Briscoe v. Between Consol. Sch. Dist., 171 Ga. 820, 156 S.E. 654, 1931 Ga. LEXIS 472 (1931) (decided under former Code 1910, § 77).

Liability for innocent denial of voting right. — A superintendent of elections, having taken the prescribed statutory oath, is not criminally liable in the absence of fraud or malice when under a mistaken interpretation of the Constitution the superintendent denies an elector the right to vote. Seeley v. Koox, 21 F. Cas. 1014, 1874 U.S. App. LEXIS 1890 (C.C.S.D. Ga. Apr. 1, 1874) (decided under former Code 1873, § 1283).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — An offense under O.C.G.A. § 21-2-590 would be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-591. Poll officers permitting unlawful assistance to voters.

Any poll officer who permits a voter to be accompanied by another into the voting compartment or voting machine booth when such poll officer knows that the disability which the voter declared at the time of registration no longer exists or that the disability which the voter declared at the time of voting did not exist shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1927, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-591 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-592. Failure of poll officers to keep record of assisted voters.

Any poll officer who willfully fails to keep a record, as required by Code Section 21-2-409, of the name of each voter who received assistance, the exact disability of any assisted voter which makes the assistance necessary, and the name of each person rendering assistance to a voter shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1928, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-592 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 456.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-593. Failure of law enforcement officers to remove obstacles or to maintain order at polling places; hindrance or delay of poll officers by law enforcement officers.

Any law enforcement officer who:

(1) Willfully neglects or refuses to clear an avenue to the door of any polling place which is obstructed in such a way as to prevent electors from entering, when called upon to do so by any poll officer or elector of the precinct;

(2) Willfully neglects or refuses to maintain order and quell any disturbance if such arises at any polling place upon the day of any primary or election, when called upon to do so by any poll officer or elector of the precinct; or

(3) Willfully hinders or delays, or attempts to hinder or delay, any poll officer in the performance of any duty under this chapter

shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1919, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1.

Cross references.
Law enforcement officers generally, T. 35.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-593 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

21-2-594. Offenses by printers of ballots.

Any printer employed to print any official ballots for use in a primary or election, or any person engaged in printing the same, who:

(1) Appropriates to himself or herself or gives or delivers, or knowingly permits to be taken, any of said ballots by any unauthorized person; or

(2) Willfully and knowingly prints, or causes to be printed, any official ballot in any form other than that prescribed by the appropriate officials or with any other names or printing, or with the names spelled otherwise than as directed by such officials or the names or printing thereon arranged in any other way than that authorized and directed by this chapter

shall be guilty of a felony.

History.
Ga. L. 1922, p. 97, § 6; Code 1933, §§ 34-1907, 34-9917; Code 1933, § 34-1911, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 35/HB 540.

21-2-595. [Reserved] Disposition of alcoholic beverages on primary or election days.

History.
Ga. L. 1964, Ex. Sess. p. 26, § 1; repealed by Ga. L. 1984, p. 1268, § 2, effective July 1, 1984.
Editor's notes.
Ga. L. 1984, p. 1268, § 2 repealed and reserved this Code section, effective July 1, 1984. For current provisions regarding sale of alcoholic beverages on election days, see § 3-3-20.

21-2-596. Failure of public or political officer to perform duty.

Any public officer or any officer of a political party or body on whom a duty is laid by this chapter who willfully neglects or refuses to perform his or her duty shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1935, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

JUDICIAL DECISIONS

Requirement that additional registration places be advertised. — Former Code 1933, § 34-610 (see now O.C.G.A. § 21-2-218(d)) may be enforced as to future registration by mandamus or injunction against the registrars and in any instance where it is willfully abrogated by the responsible public officers, they are subject to criminal prosecution under former Code 1933, § 34-1935 (see now O.C.G.A. § 21-2-596). Malone v. Tison, 248 Ga. 209, 282 S.E.2d 84, 1981 Ga. LEXIS 952 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-596 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 449.

C.J.S.
29 C.J.S., Elections, § 573.

21-2-597. Intentional interference with performance of election duties.

Any person who intentionally interferes with, hinders, or delays or attempts to interfere with, hinder, or delay any other person in the performance of any act or duty authorized or imposed by this chapter shall be guilty of a misdemeanor.

History.
Code 1933, § 34-1936, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-597 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, §§ 575, 576.

21-2-598. Violations of chapter.

Except as otherwise provided by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor.

History.
Code 1981, § 21-2-598, enacted by Ga. L. 1998, p. 295, § 1.
Editor's notes.
Ga. L. 1998, p. 295, § 1, effective January 1, 1999, redesignated former Code Section 21-2-598 as present Code Section 21-2-599.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 477.

C.J.S.
29 C.J.S., Elections, § 608.

21-2-599. Punishment for misdemeanors under chapter.

Any person convicted of a misdemeanor under this chapter shall be subject to any one or more of the following, in the discretion of the trial judge:

(1) A fine of not less than $100.00 nor more than $1,000.00;

(2) A sentence of confinement in the county jail or other place of imprisonment for a period not to exceed six months; or

(3) A sentence of confinement in a county correctional institution or other appropriate institution under the jurisdiction of the Department of Corrections not to exceed 12 months.

History.
Code 1933, § 34-1941, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1977, p. 1053, § 11; Code 1981, § 21-2-598; Ga. L. 1985, p. 283, § 1; Code 1981, § 21-2-599, as redesignated by Ga. L. 1998, p. 295, § 1.

Editor's notes.
Ga. L. 1998, p. 295, § 1, effective January 1, 1999, redesignated former Code Section 21-2-598 as present Code Section 21-2-599.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 477.

C.J.S.
29 C.J.S., Elections, § 608.

21-2-600. Punishment for felonies under chapter.

Except as otherwise provided, any person convicted of a felony under this chapter shall be punished by a fine not to exceed $10,000.00 or imprisonment of not less than one year nor more than ten years, or both, in the discretion of the trial court, or may be punished as for a misdemeanor in the discretion of the trial court.

History.
Code 1933, § 34-1940, enacted by Ga. L. 1964 Ex. Sess., p. 26, § 1; Code 1981, § 21-2-599; Code 1981, § 21-2-600, as redesignated by Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 19, 42; Ga. L. 2007, p. 536, § 13/SB 40.

21-2-601. Use of list of electors for commercial purposes prohibited.

Any person who intentionally uses the list of electors provided for in Code Section 21-2-225 for commercial purposes shall be guilty of a misdemeanor.

History.
Code 1981, § 21-2-600, enacted by Ga. L. 1990, p. 143, § 7; Ga. L. 1994, p. 1443, § 13; Code 1981, § 21-2-601, as redesignated by Ga. L. 1998, p. 295, § 1.

Editor's notes.
Ga. L. 1998, p. 295, § 1, effective January 1, 1999, redesignated former Code Section 21-2-600 as present Code Section 21-2-601.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-601 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

21-2-602. Compensation for soliciting persons to register to vote prohibited.

It shall be illegal to receive, accept, offer, or provide compensation for soliciting persons to register to vote based upon the number of persons registered and any person who knowingly receives, accepts, offers, or provides such compensation on such basis shall be guilty of a misdemeanor.

History.
Code 1981, § 21-2-600, enacted by Ga. L. 1994, p. 1443, § 14; Code 1981, § 21-2-602, as redesignated by Ga. L. 1998, p. 295, § 1.

Editor's notes.
Ga. L. 1998, p. 295, § 1, effective January 1, 1998, redesignated former Code Section 21-2-601 as present Code Section 21-2-602.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense under O.C.G.A. § 21-2-602 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

21-2-603. Conspiracy to commit election fraud.

A person commits the offense of conspiracy to commit election fraud when he or she conspires or agrees with another to commit a violation of this chapter. The crime shall be complete when the conspiracy or agreement is effected and an overt act in furtherance thereof has been committed, regardless of whether the violation of this chapter is consummated. A person convicted of the offense of conspiracy to commit election fraud involving a violation of this chapter which is a felony shall be punished by imprisonment for not less than one year nor more than one-half the maximum period of time for which he or she could have been sentenced if he or she had been convicted of the crime conspired to have been committed, by one-half the maximum fine to which he or she could have been subjected if he or she had been convicted of such crime, or both. A person convicted of the offense of conspiracy to commit election fraud involving a violation of this chapter which is a misdemeanor shall be punished as for a misdemeanor.

History.
Code 1981, § 21-2-603, enacted by Ga. L. 2005, p. 253, § 65/HB 244.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elections, § 351.

C.J.S.
29 C.J.S., Elections, §§ 367, 578.

21-2-604. Criminal solicitation to commit election fraud; penalties.

(a)(1) A person commits the offense of criminal solicitation to commit election fraud in the first degree when, with intent that another person engage in conduct constituting a felony under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.

(2) A person commits the offense of criminal solicitation to commit election fraud in the second degree when, with intent that another person engage in conduct constituting a misdemeanor under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.

(b)(1) A person convicted of the offense of criminal solicitation to

commit election fraud in the first degree shall be punished by imprisonment for not less than one nor more than three years.

(2) A person convicted of the offense of criminal solicitation to commit election fraud in the second degree shall be punished as for a misdemeanor.

(c) It is no defense to a prosecution for criminal solicitation to commit election fraud that the person solicited could not be guilty of the crime solicited.

(d) The provisions of subsections (a) through (c) of this Code section are cumulative and shall not supersede any other penal law of this state.

History.
Code 1981, § 21-2-604, enacted by Ga. L. 2011, p. 683, § 21/SB 82.

CHAPTER 3

MUNICIPAL ELECTIONS AND PRIMARIES

Sec.
21-3-1 through 21-3-480. [Reserved].

21-3-1 through 21-3-480. [Reserved].

History.

Orig. Code 1863, § 1232; Ga. L. 1865-66, p. 24, § 1; Code 1868, § 1313; Code 1873, § 1286; Code 1882, § 1286; Ga. L. 1894, p. 115, §§ 7—10, 12, 16 ; Civil Code 1895, §§ 50, 52, 56, 58—60, 64, 65, 70; Ga. L. 1898, p. 93, § 1; Ga. L. 1908, p. 58, §§ 6, 8, 10; Civil Code 1910, §§ 52, 54, 59, 63, 65—68, 71, 74, 75, 80; Ga. L. 1913, p. 115, §§ 1, 3; Ga. L. 1922, p. 97, §§ 3-5; Ga. L. 1924, p. 186, §§ 3, 4, 6, 11, 12, 14; Code 1933, §§ 34-115, 34-301, 34-303, 34-405, 34-408, 34-602, 34-604, 34-605, 34-701, 34-801, 34-804, 34-1101, 34-1102, 34-1302, 34-1904—34-1906, 34-1914, 34-3302, 34-3303, 34-3305, 34-3311, 34-3312, 34-3314; Ga. L. 1941, p. 321, § 1; Ga. L. 1941, p. 324, §§ 1, 2; Ga. L. 1941, p. 429, § 1; Ga. L. 1943, p. 228, § 1; Ga. L. 1943, p. 290, § 1; Ga. L. 1943, p. 347, § 1; Ga. L. 1943, p. 353, §§ 2, 3; Ga. L. 1946, p. 75, §§ 2, 3; Ga. L. 1948 Ex. Sess., p. 3, § 1; Ga. L. 1949, p. 1204, §§ 6, 8, 10, 11, 13—15, 18, 19, 23, 24, 26, 28, 29, 32—36, 38, 39, 42, 45, 47, 52; Ga. L. 1952, p. 304, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 579, § 1; Ga. L. 1955, p. 204, §§ 1—3, 5; Ga. L. 1955, p. 344, § 1; Ga. L. 1955, p. 732, §§ 1—3; Ga. L. 1956, p. 333, § 1; Ga. L. 1956, p. 682, §§ 1—4; Ga. L. 1957, p. 39, § 1; Ga. L. 1957, p. 71, § 1; Ga. L. 1957, p. 385, § 1; Ga. L. 1958, p. 269, §§ 1, 2, 3, 5, 8, 10—12, 15, 16, 20—24, 27, 28, 30—33, 36, 39, 42; Ga. L. 1959, p. 182, § 1; Ga. L. 1960, p. 257, § 1; Ga. L. 1960, p. 955, § 1; Ga. L. 1961, p. 56, § 1; Ga. L. 1961, p. 162, § 1; Ga. L. 1961, p. 164, § 1; Ga. L. 1961, p. 557, § 1; Ga. L. 1962, p. 98, § 1; Ga. L. 1962, p. 504, § 1; Ga. L. 1962, p. 618, § 1; Ga. L. 1962, p. 678, § 1; Ga. L. 1963, p. 73, § 1; Ga. L. 1963, p. 172, § 1; Ga. L. 1963, p. 506, § 1; Code 1933, §§ 34A-101—34A-111, 34A-201, 34A-301—34A-303, 34A-401—34A-408, 34A-501—34A-511, 34A-513—34A-524, 34A-601—34A-607, 34A-701—34A-706, 34A-801—34A-803, 34A-901—34A-915, 34A-1001—34A-1012, 34A-1101—34A-1131, 34A-1201—34A-1206, 34A-1206.1, 34A-1207—34A-1213, 34A-1213.1, 34A-1214—34A-1217, 34A-1217.1, 34A-1218—34A-1223, 34A-1223.1, 34A-1224—34A-1226, 34A-1226.1, 34A-1227—34A-1235, 34A-1301—34A-1313, 34A-1401—34A-1410, enacted by Ga. L. 1968, p. 885, § 1; Ga. L. 1969, p. 282, §§ 1—3; Ga. L. 1969, p. 285, §§ 5, 6, 8, 9; Ga. L. 1969, p. 355, §§ 1—11, 13—30, 32, 33, 35—38; Ga. L. 1970, p. 341, §§ 1—11; Ga. L. 1971, p. 634, § 1; Ga. L. 1972, p. 482, § 1; Ga. L. 1972, p. 836, § 1; Ga. L. 1973, p. 277, § 1; Ga. L. 1974, p. 82, §§ 1—27; Ga. L. 1974, p. 99, §§ 1, 2; Ga. L. 1974, p. 522, § 2; Ga. L. 1975, p. 686, § 2; Ga. L. 1975, p. 769, § 1; Ga. L. 1975, p. 872, § 1; Ga. L. 1975, p. 888, §§ 1—10; Ga. L. 1976, p. 205, §§ 3, 4; Ga. L. 1977, p. 173, § 1; Ga. L. 1977, p. 303, §§ 1—5; Ga. L. 1977, p. 550, § 2; Ga. L. 1977, p. 1197, § 1; Ga. L. 1978, p. 1024, §§ 1, 2; Ga. L. 1978, p. 1025, §§ 1—9, 11—14; Ga. L. 1978, p. 1035, § 2; Ga. L. 1978, p. 1039, § 2; Ga. L. 1978, p. 1042, § 1; Ga. L. 1978, p. 1045, § 1; Ga. L. 1979, p. 631, § 1; Ga. L. 1979, p. 960, §§ 1, 2; Ga. L. 1979, p. 964, §§ 1—4; Ga. L. 1979, p. 967, § 1; Ga. L. 1979, p. 968, §§ 2, 3; Ga. L. 1979, p. 970, § 1; Ga. L. 1979, p. 1010, § 1; Ga. L. 1980, p. 314, § 1; Ga. L. 1980, p. 684, § 1; Ga. L. 1980, p. 1005, §§ 1, 3, 4; Ga. L. 1981, p. 486, § 1; Ga. L. 1981, p. 536, § 1; Ga. L. 1981, p. 545, § 1; Ga. L. 1981, p. 551, § 1; Ga. L. 1981, p. 1238, §§ 2, 3; Ga. L. 1981, p. 1430, §§ 1—3; Ga. L. 1981, p. 1716, § 1; Ga. L. 1981, p. 1728, §§ 1—11; Ga. L. 1981, p. 1801, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, §§ 1, 4, 5; Ga. L. 1982, p. 1670, §§ 1—6; Ga. L. 1982, p. 2107, §§ 25-27; Ga. L. 1983, p. 140, § 1; Ga. L. 1983, p. 402, § 1; Ga. L. 1983, p. 535, §§ 2, 3; Ga. L. 1983, p. 686, § 2; Ga.

L. 1983, p. 786, § 3; Ga. L. 1983, p. 930, §§ 7—9; Ga. L. 1983, p. 964, § 2; Ga. L. 1984, p. 1, §§ 16—22; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 634, § 1; Ga. L. 1984, p. 661, § 3; Ga. L. 1984, p. 674, § 2; Ga. L. 1984, p. 675, § 2; Ga. L. 1984, p. 677, § 2; Ga. L. 1984, p. 826, § 1; Ga. L. 1984, p. 860, § 1; Ga. L. 1984, p. 922, § 2; Ga. L. 1984, p. 1038, § 3; Ga. L. 1984, p. 1087, §§ 8—13; Ga. L. 1984, p. 1372, § 2; Ga. L. 1984, p. 1376, § 1; Ga. L. 1984, p. 1490, §§ 4—6; Ga. L. 1985, p. 206, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 496, §§ 16—22; Ga. L. 1985, p. 632, § 6; Ga. L. 1985, p. 1236, § 2; Ga. L. 1985, p. 1318, §§ 3, 4; Ga. L. 1985, p. 1328, § 2; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 348, § 2; Ga. L. 1986, p. 382, §§ 7—9; Ga. L. 1986, p. 772, §§ 7—10; Ga. L. 1986, p. 932, §§ 7—10; Ga. L. 1986, p. 1538, §§ 4—7; Ga. L. 1987, p. 34, § 1; Ga. L. 1987, p. 417, §§ 10—16; Ga. L. 1987, p. 465, § 2; Ga. L. 1987, p. 787, § 1; Ga. L. 1987, p. 1360, §§ 20—26; Ga. L. 1988, p. 206, § 1; Ga. L. 1988, p. 465, § 2; Ga. L. 1988, p. 639, § 2; Ga. L. 1988, p. 641, §§ 3, 4; Ga. L. 1988, p. 647, § 4; Ga. L. 1988, p. 752, §§ 6—10; Ga. L. 1988, p. 765, § 1; Ga. L. 1988, p. 926, § 2; Ga. L. 1988, p. 928, § 2; Ga. L. 1988, p. 964, §§ 3—5; Ga. L. 1989, p. 10, § 1; Ga. L. 1989, p. 44, § 1; Ga. L. 1989, p. 659, § 2; Ga. L. 1989, p. 682, § 2; Ga. L. 1989, p. 787, § 1; Ga. L. 1989, p. 842, §§ 3, 4; Ga. L. 1989, p. 900, § 3; Ga. L. 1989, p. 911, §§ 3, 4; Ga. L. 1989, p. 1082, § 2; Ga. L. 1989, p. 1084, §§ 4—6; Ga. L. 1989, p. 1742, §§ 3, 4; Ga. L. 1990, p. 53, § 1; Ga. L. 1990, p. 143, §§ 7A, 8—14; Ga. L. 1990, p. 243, §§ 9—14; Ga. L. 1990, p. 1238, § 2; Ga. L. 1990, p. 1399, § 1; Ga. L. 1991, p. 133, § 1; Ga. L. 1991, p. 316, § 2; Ga. L. 1991, p. 599, § 2; Ga. L. 1991, p. 632, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1992, p. 1163, § 1; Ga. L. 1992, p. 1693, § 1; Ga. L. 1992, p. 1697, § 1; Ga. L. 1992, p. 1698, § 1; Ga. L. 1992, p. 1815, §§ 6—10; Ga. L. 1992, p. 2510, §§ 4—6; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 617, §§ 2, 11—16; Ga. L. 1993, p. 712, § 2; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 279, §§ 13, 14, 16, 17; Ga. L. 1994, p. 349, § 1; Ga. L. 1994, p. 1406, §§ 29—50; Ga. L. 1994, p. 1443, §§ 15—25; Ga. L. 1995, p. 8, § 1; Ga. L. 1995, p. 417, § 2; Ga. L. 1995, p. 786, §§ 1, 2; Ga. L. 1995, p. 1027, §§ 18—20, 20A, 21; Ga. L. 1995, p. 1044, § 2; Ga. L. 1995, p. 1302, §§ 13—15; Ga. L. 1996, p. 143, § 1; Ga. L. 1996, p. 145, §§ 22—26; Ga. L. 1997, p. 8, § 2; Ga. L. 1997, p. 548, § 1; Ga. L. 1997, p. 649, §§ 7—9; Ga. L. 1997, p. 662, §§ 4—6; Ga. L. 1997, p. 1048, §§ 1; Ga. L. 1998, p. 1231, §§ 20—24; repealed by Ga. L. 1998, p. 295, § 2, effective January 1, 1999.

Editor's notes.

Former Code Section 21-3-16 (Ga. L. 1974, p. 522, § 2 and Ga. L. 1976, p. 205, § 4), relating to false statements in connection with filing notice of candidacy, was repealed by Ga. L. 1984, p. 661, § 1.

Former Code Section 21-3-17 (Ga. L. 1968, p. 885, § 1), relating to penalty for violation of chapter, was repealed by Ga. L. 1984, p. 661, § 2.

Former Code Section 21-3-133.1 (Ga. L. 1984, p. 1490, § 6), relating to exchange of municipality and county elector lists, was repealed by Ga. L. 1985, p. 496, § 17.

Former Code Section 21-3-264 (Code 1981, enacted by Ga. L. 1988, p. 964, § 5), relating to use of optical scan voting systems, was repealed by Ga. L. 1998, p. 1231, § 21.

Former Code Section 21-3-325 (Code 1933 § 34A-1213.1, enacted by Ga. L. 1969, p. 355, § 21, Ga. L. 1974, p. 82, § 21), relating to methods of casting ballots in elections utilizing paper ballots or vote recorders, was repealed by Ga. L. 1994, p. 279, § 15.

Former Code Section 21-3-476 (Ga. L. 1984, p. 661, § 3), relating to selling or buying alcoholic beverages on primary or election days, was repealed by Ga. L. 1985, p. 1508, § 2.

Former Code Section 21-3-480 (Code 1981, enacted by Ga. L. 1990, p. 143, § 14), relating to use of list of electors for commercial purposes prohibited, was repealed by Ga. L. 1994, p. 1443, § 14.

This chapter consisted of Code Sections 21-3-1 through 21-3-7, 21-3-7.1, 21-3-8 through 21-3-17 (Article 1), 21-3-30 through 21-3-39 (Article 2), 21-3-50 through 21-3-53 (Article 3, Part 1), 21-3-60 through 21-3-64 (Article 3, Part 2), 21-3-70 through 21-3-72 (Article 4), 21-3-90 through 21-3-105 (Article 5), 21-3-120 through 21-3-130, 21-3-130.1, 21-3-131 through 21-3-133, 21-3-133.1, 21-3-

134 through 21-3-143 (Article 6), 21-3-160, 21-3-161, 21-3-161.1, 21-3-162 through 21-3-166 (Article 7), 21-3-180 through 21-3-194 (Article 8), 21-3-210 (Article 9, Part 1), 21-3-220 through 21-3-234 (Article 9, Part 2), 21-3-250 through 21-3-264 (Article 9, Part 3), 21-3-265 through 21-3-279 (Article 9, Part 4), 21-3-279.1 through 21-3-279.4 (Article 9, Part 5), 21-3-280 through 21-3-291 (Article 10), 21-3-310 through 21-3-318, 21-3-318.1, 21-3-319 through 21-3-328 (Article 11, Part 1), 21-3-340 through 21-3-348 (Article 11, Part 2), 21-3-360 through 21-3-367 (Article 11, Part 3), 21-3-380 through 21-3-383 (Article 11, Part 4), 21-3-385, 21-3-385.1 through 21-3-385.6 (Article 11, Part 5), 21-3-400 through 21-3-408, 21-3-408.1, 21-3-409, 21-3-410 (Article 12), 21-3-420 through 21-3-422, 21-3-422.1, 21-3-423 through 21-3-430 (Article 13), 21-3-440 through 21-3-480 (Article 14), relating to municipal elections and primaries.

Ga. L. 1998, p. 295, § 2 repealed and reserved this chapter, effective January 1, 1999.

CHAPTER 4

RECALL OF PUBLIC OFFICERS

Sec.	
21-4-1.	Short title.
21-4-2.	Legislative intent.
21-4-3.	Definitions.
21-4-4.	Officers subject to recall; number of electors needed to demand recall; limitation on number of officers subject to a recall.
21-4-5.	Sponsor applications for recall petition; procedures; duties of election superintendents and Secretary of State.
21-4-6.	Review of grounds for recall petition.
21-4-7.	Form of recall petition.
21-4-8.	Circulation of recall petition; electors eligible to sign; procedures for collection and verification of signatures.
21-4-9.	Withdrawal of signatures from recall application or petition.
21-4-10.	Persons who may not circulate recall application or petition; effect of signatures obtained by unqualified persons.
21-4-11.	Determination of legal sufficiency of recall petition; time period for filing; amendments; notification of legal sufficiency.
21-4-12.	No recall election when officeholder resigns prior to the holding of a recall election.
21-4-13.	Procedures for recall election; number of votes required to effectuate recall; special election to fill vacancy created.
21-4-14.	Limitations on subsequent recall petitions following recall election.
21-4-15.	Manner of conducting recall elections.
21-4-16.	Campaign and financial disclosure requirements, restrictions, and qualifications.
21-4-17.	Promulgation of rules and regulations by Secretary of State.
21-4-18.	Application to court to compel election superintendent to comply with chapter; jurisdiction and venue of actions against election superintendent.
21-4-19.	Determination of eligibility to sign application for recall petition or petition for recall.
21-4-20.	Giving or receiving money or other thing of value to sign petition or affidavit; compelling person to sign petition or to remove name; signing another's name to petition; signing more than one; signing by ineligible person.
21-4-21.	Construction of chapter.

Cross references.

Recall of public officials holding elective office, Ga. Const. 1983, Art. II, Sec. II, Para. IV.

Special elections and primaries generally, § 21-2-540 et seq.

Editor's notes.

Former Chapter 4 of Title 21, known as the "Public Officer's Recall Act" was declared unconstitutional in the case of Mitchell v. Wilkerson, 258 Ga. 608, 372 S.E.2d 432 (1988). That chapter consisted of Code Sections 21-4-1 through 21-4-19 and was derived from Ga. L. 1979, p. 1612; Ga. L. 1980, p. 1436; Ga. L. 1982, p. 1512; Ga. L. 1982, p. 1653; Ga. L. 1983, p. 140; Ga. L. 1983, p. 884; Ga. L. 1984, p. 133; Ga. L. 1987, p. 34; and Ga. L. 1987, p. 896.

Ga. L. 1989, p. 1721, § 2, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to every public official who holds elective office on or after the effective date of this Act. The provisions of this Act shall apply with respect to an incumbent public official where the act or omission constituting grounds for recall, as specified in subparagraph (B) of paragraph (7) of Code Section 21-4-3, occurred in a previous term of office but was withheld from public knowledge or public disclosure until subsequent to the general election at which the incumbent was last elected, provided that an application for a recall petition is filed within 12 months after such general election." This Act became effective April 19, 1989.

Law reviews.

For note on 1989 enactment of this chapter, see 6 Ga. St. U. L. Rev. 236 (1989).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, cases decided prior to the 1989 revision of this chapter are included in the annotations for this chapter.

Constitutionality. — The absence of a specification of grounds for a recall in O.C.G.A. T. 21, Ch. 4 caused the statute to fall short of that which was required of the General Assembly by Ga. Const. 1983, Art. II, Sec. II, Para. IV and resulted in a fatal constitutional infirmity. Mitchell v. Wilkerson, 258 Ga. 608, 372 S.E.2d 432, 1988 Ga. LEXIS 411 (1988).

Harmless irregularities or technical violations. — The following alleged irregularities or technical violations did not endanger the interest intended to be protected by O.C.G.A. T. 21, Ch. 4: (1) in some instances the circulators signed as electors petitions which they were circulating; (2) two circulators signed the affidavit on petitions when neither of the circulators saw all of the electors sign; and (3) a notary public notarized the circulator's affidavit on a petition which the notary public has signed as an elector. Parker v. McCants, 258 Ga. 364, 369 S.E.2d 481, 1988 Ga. LEXIS 281 (1988).

Solicitation of signatures in private shopping malls. — Nothing in the Georgia Constitution or the Recall Act of 1989, O.C.G.A. § 21-4-1 et seq., either separately or together, establishes a right of private citizens to enter onto privately owned shopping malls to solicit signatures for a recall petition. Citizens for Ethical Gov't, Inc. v. Gwinnett Place Assoc., 260 Ga. 245, 392 S.E.2d 8, 1990 Ga. LEXIS 231 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided prior to the 1989 revision of this chapter are included in the annotations for this chapter.

Specific reason for recall effort. — The Public Officers Recall Act, O.C.G.A. § 21-4-1 et seq., contains no requirement that the recall effort be based upon any specific reason with respect to the public officer who is the subject of the effort. 1981 Op. Att'y Gen. No. U81-11.

Initiation of second recall effort. — Former Code 1933, §§ 89-1905 and 89-1914 (see now O.C.G.A. §§ 21-4-5 and 21-4-14) represent the only constraints upon initiation of a second recall effort notwithstanding previous but unsuccessful recall efforts made against the same public officer. 1981 Op. Att'y Gen. No. U81-11.

Appeal of conviction not bar to recall election. — The recall election procedures of the former Public Officers Recall Act, O.C.G.A. § 21-4-1 et seq., could be invoked by electors with respect to a public official notwithstanding the pendency of that official's appeal of a felony conviction. 1983 Op. Att'y Gen. No. 83-16.

Supersession of local provisions. — The special election provisions of the former Public Officers Recall Act, O.C.G.A.

§ 21-4-1 et seq., superseded any provisions of any local Act providing for the filling of vacancies on a county board of commissioners. 1983 Op. Att'y Gen. No. 83-16.

RESEARCH REFERENCES

ALR.

Construction and application of constitutional or statutory requirement as to short title, ballot title, or explanation of nature of proposal in initiative referendum, or recall petition, 106 A.L.R. 555.

21-4-1. Short title.

This chapter shall be known and may be cited as the "Recall Act of 1989."

History.

Code 1981, § 21-4-1, enacted by Ga. L. 1989, p. 1721, § 1.

Cross references.

Vacation of office, T. 45, C. 5.

JUDICIAL DECISIONS

Construction with other law. — A city commissioner's removal from office, based on acts committed prior to taking office, was erroneous because: (1) removal was not authorized by the city's charter; (2) the commissioner's conduct of maintaining innocence until the entry of a guilty plea after taking office was not an official act or one done under the color of the office; and (3) the acts committed did not prevent the commissioner from performing the duties of that post. Moreover, while the acts committed did not subject the commissioner to removal pursuant to the terms of the city charter, the acts would have been more appropriately the subject of a recall petition pursuant to O.C.G.A. § 21-4-1 et seq. Ciccio v. City of Hephzibah, 289 Ga. App. 134, 656 S.E.2d 245, 2008 Ga. App. LEXIS 16 (2008), cert. denied, No. S08C0862, 2008 Ga. LEXIS 474 (Ga. May 19, 2008).

RESEARCH REFERENCES

ALR.

Validity, under state constitutions, of private shopping center's prohibition or regulation of political, social, or religious expression or activity, 52 A.L.R.5th 195.

Sufficiency of particular charges as affecting enforceability of recall petition, 114 A.L.R.5th 1.

Sufficiency of technical and procedural aspects of recall petitions, 116 A.L.R.5th 1.

Constitutionality of state and local recall provisions, 13 A.L.R.6th 661.

21-4-2. Legislative intent.

The General Assembly finds that the electorate of the state overwhelmingly ratified an amendment to the Constitution of Georgia at the general election in November, 1978, authorizing the General Assembly to provide by general law for uniform and exclusive procedures to recall public officials who hold elective office and to repeal all local recall laws and prohibit the future enactment of any local recall laws. In furtherance of the mandate of the electorate, by this general law the General Assembly establishes uniform and exclusive proce-

dures relating to the recall of all state and local officials who hold elective office.

History.
Code 1981, § 21-4-2, enacted by Ga. L. 1989, p. 1721, § 1.

Cross references.
Recall of public officials holding elective office, Ga. Const. 1983, Art. II, Sec. II, Para. IV.

21-4-3. Definitions.

As used in this chapter, the term:

(1) "Elected county school board members" and "elected county school superintendents" shall be considered county officers.

(2) "Elected education board members" and "elected school superintendents" of any independent school system shall be considered municipal officers.

(3) "Election superintendent" means:

(A) In the case of any elected state officers, the Secretary of State;

(B) In the case of any elected county officers, the county board of elections, if a county has such, or the judge of the probate court, provided that, if such judge of the probate court is the officer sought to be recalled, then the election superintendent shall be the clerk of the superior court; and

(C) In the case of any elected municipal officers, the municipal clerk or municipal board of elections or municipal election superintendent, if the municipality has such a board or election officer.

(3.1) "Elective office" means an office filled by the exercise of the franchise of vote by electors in a general or special election as defined under the laws of this state.

(4) "Elector" means any person who possesses all of the qualifications for voting now or hereafter prescribed by the laws of this state and who has registered in accordance with Chapter 2 of this title.

(5) "Electoral district" means the area in which the electors reside who are qualified to vote for any of the candidates offering for a particular office.

(6) "Failure to perform duties prescribed by law" means the willful neglect or failure by an official to perform a duty imposed by statute.

(7) "Grounds for recall" means:

(A) That the official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public; and

(B) That the official:

(i) Has committed an act or acts of malfeasance while in office;

(ii) Has violated his or her oath of office;

(iii) Has committed an act of misconduct in office;

(iv) Is guilty of a failure to perform duties prescribed by law; or

(v) Has willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed.

Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official; provided, however, that a judicial circuit district attorney's failure to perform the duties provided for in Code Section 15-18-6 or a state court solicitor-general's failure to perform the duties provided for in Code Section 15-18-66 shall constitute grounds for a recall of such elected official.

(7.1) "Legal sufficiency" means, solely as applied to the duties or functions of the election superintendent, a determination of the completeness of an application for a recall petition or a recall petition and a determination that an application for a recall petition or a recall petition contains a sufficient number of valid signatures. Such determinations shall not include any review of the sufficiency of the ground or grounds for the recall and the fact or facts upon which such ground or grounds are based.

(8) "Misconduct in office" means an unlawful act committed willfully by an elected public official or a willful violation of the code of ethics for government service contained in Code Section 45-10-1.

(9) "Official sponsors" or "sponsors" means the electors who circulate or file an application for a recall petition who were registered and eligible to vote in the last general or special election for the office held by the officer sought to be recalled and who reside in the electoral district of the officer sought to be recalled.

History.

Code 1981, § 21-4-3, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1990, p. 1939, § 1; Ga. L. 1991, p. 133, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2014, p. 866, § 21/SB 340; Ga. L. 2023, p. 718, § 4/SB 92, effective May 5, 2023.

The 2023 amendment, effective May

5, 2023, added the proviso at the end of the undesignated paragraph following division (7)(B)(v).

Editor's notes.

Ga. L. 1990, p. 1939, § 8, not codified by the General Assembly, provides that the Act shall only apply to recall proceedings under Chapter 4 of Title 21 which are instituted on or after July 1, 1990.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, cases decided prior to the 1989 revision of this chapter are included in the annotations for this Code section.

Constitutionality. — The provision of O.C.G.A. § 21-4-3(7)(B)(i) that an official "has committed an act or acts of malfeasance while in office" is not unconstitutionally vague; the legislature enacted the section with knowledge of the definition of "malfeasance in office" as contained in case law. Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650, 1994 Ga. LEXIS 78 (1994).

Conduct of a public official who participates in a closed meeting that is required by law to be open can become a "ground for recall" under the Recall Act, O.C.G.A. § 21-4-1 et seq., if the circumstances of that participation come within the definition of "grounds for recall." Steele v. Honea, No. S91A1106, 1991 Ga. LEXIS 1043 (Ga. Nov. 1, 1991).

Grounds alleged in recall petition. — If one or more of the statutory grounds for recall set forth in O.C.G.A. § 21-4-3(7)(B) are alleged in the recall application, then the ground or grounds for recall are legally sufficient. Brooks v. Branch, 262 Ga. 658, 424 S.E.2d 277, 1993 Ga. LEXIS 69 (1993).

Since the factual allegations were either a mere conclusion, lacking reasonable particularity, or failed to allege conduct which would constitute one of the statutory grounds for recall, they were legally insufficient to support grounds for recall. Brooks v. Branch, 262 Ga. 658, 424 S.E.2d 277, 1993 Ga. LEXIS 69 (1993).

Sufficiency of recall applications. — Applications seeking the recall of city officials were insufficient within the meaning of O.C.G.A. § 21-4-3(7)(B) in that there was nothing in the applications from which the public could determine that the allegations, even if taken as true, amounted to acts of misconduct or malfeasance. Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650, 1994 Ga. LEXIS 78 (1994).

RESEARCH REFERENCES

ALR.

Sufficiency of particular charges as affecting enforceability of recall petition, 114 A.L.R.5th 1.

Sufficiency of technical and procedural aspects of recall petitions, 116 A.L.R.5th 1.

21-4-4. Officers subject to recall; number of electors needed to demand recall; limitation on number of officers subject to a recall.

(a) Every public official who holds elective office, either by election or by appointment, is subject to recall from office by electors who are registered and qualified to vote in the recall election and who reside in the electoral district from which candidates are elected to that office:

(1) In the case of a state officer whose electoral district encompasses the entire state, the number of electors necessary to petition

the recall of the officer shall be equal to at least 15 percent of the number of electors who were registered and qualified to vote at the last preceding election for any candidate offering for the office held by the officer. At least one-fifteenth of the number of electors necessary to petition the recall of the officer must reside in each of the United States congressional districts in the state as said congressional districts may now or hereafter exist; or

(2) In the case of a state officer whose electoral district encompasses only a part of the state or in the case of a local officer, the number of electors necessary to petition the recall of the officer shall be equal to at least 30 percent of the number of electors registered and qualified to vote at the last preceding election for any candidate offering for the office held by the officer.

(b) No recall petition shall demand the recall of more than one public official.

(c) Every public official who holds elective office, either by election or by appointment, is subject to recall on the grounds that such public official has, while holding any public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her current office and adversely affects the rights and interests of the public if one or more additional grounds for recall exist as set forth in subparagraph (B) of paragraph (7) of Code Section 21-4-3.

History.

Code 1981, § 21-4-4, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 2001, p. 230, § 18.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided prior to the 1989 revision of this chapter and under Ga. L. 1979, p. 1612 are included in the annotations for this Code section.

Required number of signatures where form of government altered. — In the case of county commissioners who were previously elected at-large but now represent districts under a new plan of government, the number of signatures required for a recall petition should be calculated based upon the number of voters registered and qualified to vote in the last preceding general election for the area encompassed by the district which the commissioner now represents. 1986 Op. Att'y Gen. No. 86-12 (decided under former § 21-4-4 prior to the 1989 revision).

Signatures needed on recall petition. — A recall petition for a member of the Georgia House of Representatives who is elected from a multi-member district and who is elected at-large by vote of the electors of the entire district shall contain signatures equal to at least 30 percent of the electors of the entire district who were registered and qualified to vote at the last preceding general election for the house district. 1985 Op. Att'y Gen. No. 85-21 (decided under former § 21-4-4 prior to the 1989 revision).

Appeal of conviction not bar to re-

call election. — The recall election procedures of the former Public Officers Recall Act, O.C.G.A. § 21-4-1 et seq., may be invoked by electors with respect to a public official notwithstanding the pendency of that official's appeal of a felony conviction. 1983 Op. Att'y Gen. No. 83-16 (decided under former § 21-4-4 prior to the 1989 revision).

Section looks to voters of district which official presently represents. — The use of the present tense in referring to the electorate implies an intent by the legislature to look to the voters of the specific district which the official now represents. 1979 Op. Att'y Gen. No. U79-20 (decided under Ga. L. 1979, p. 1612).

Who may sign petition for recall of county commissioner. — All electors in a county may sign a recall petition on a county commissioner who is voted on by the electors of the county at large, even though the commissioner is required by law to reside in a certain district of the county. The residence of the office holder is not relevant to the question of who may sign petitions seeking the officer's recall. 1980 Op. Att'y Gen. No. 80-39 (decided under Ga. L. 1979, p. 1612).

Persons eligible to sign recall petition and vote in election. — Persons who register to vote after a recall petition is issued are eligible to vote in the recall election and may sign the petition. 1985 Op. Att'y Gen. No. U85-38 (decided under former § 21-4-4 prior to the 1989 revision).

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Public Officers and Employees, § 199 et seq.

C.J.S.

67 C.J.S., Officers and Public Employees, §§ 271, 272.

ALR.

Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions, 40 A.L.R.6th 317.

21-4-5. Sponsor applications for recall petition; procedures; duties of election superintendents and Secretary of State.

(a) No application for a recall petition may be filed during the first 180 days or during the last 180 days of the term of office of any public official subject to recall. No person shall be authorized to circulate, sponsor, or sign such application unless such person is an elector or sponsor as defined in Code Section 21-4-3.

(b)(1) The application shall include:

(A) The name and office of the person sought to be recalled;

(B) The printed names and signatures of the official sponsors, the date signed, residence addresses, and the name of the county of residence;

(C) The designation of one of the sponsors as the petition chairperson who shall represent the sponsors on all matters pertaining to the recall application and petition;

(D) A statement that: _____ (name and office) has,

while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public and stating the appropriate ground or grounds for recall as set forth in subparagraph (B) of paragraph (7) of Code Section 21-4-3 with a brief statement of the fact or facts upon which the ground or grounds are based. Such statement shall be typed, printed, or reproduced by the election superintendent on the face of each application issued; and

(E)(i) An affidavit by the petition chairperson and the person circulating such recall application that each person sponsoring or signing such recall application is an elector of the electoral district of the officer sought to be recalled and that the fact or facts upon which the ground or grounds for recall are based are true.

(ii) The affidavit required by division (i) of this subparagraph shall be in the following form:

AFFIDAVIT OF CIRCULATOR AND
PETITION CHAIRPERSON

State of Georgia

County of _____

Under the penalty of a violation of Code Section 16-10-71 of the Official Code of Georgia Annotated, relating to false swearing, punishable by a fine not to exceed $1,000.00 or by imprisonment of not less than one nor more than five years, or both, we the undersigned do depose and say that each person sponsoring or signing the recall application of _____ is an elector of the electoral district of the officer sought to be recalled and further depose and say that the fact or facts upon which the ground or grounds for recall are based are true.

_____
(Signature of circulator)

_____
(Residence address)
(Number and street or route)

_____
(City)

_____
(Signature of petition chairperson)

_____
(Residence address)
(Number and street or route)

_____
(City)

Subscribed and sworn to
before me this _____
day of _____, _____.

_____
Notary public
_____, Georgia

My commission expires on the _____ day of _____, _____.

No notary public may sign the application as an elector or serve as a circulator of any application which he or she notarized. Any and all sheets of an application for a recall petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the application for a recall petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected.

(2) Applications shall be issued by the election superintendent who shall assign a number to each application. Such number shall appear on the face of each application. The election superintendent shall keep records of applications issued, including the date of issuance and number assigned. The election superintendent shall immediately notify in writing the public officer named for recall in the application that an application for a recall petition has been officially issued for circulation.

(3) The official application forms shall be printed by the office of the Secretary of State in substantially the form prescribed in this subsection and distributed to election superintendents.

(c) The number of official sponsors necessary to file an application for a recall petition must be equal in number to at least 100 electors or equal in number to at least 10 percent of the number of electors who were registered to vote at the last preceding election for any of the candidates offering for the office held by the public official sought to be recalled, whichever is smaller.

(d) Sponsors of a recall petition, before causing the petition to be circulated, shall submit the application for the petition to the election superintendent designated in Code Section 21-4-3 and request official recall petition forms.

(e) At any time prior to the date the election superintendent receives the application for a recall petition, an elector who has signed the application as an official sponsor may request withdrawal of his or her signature from the application by executing and filing an affidavit signed and sworn to before a notary public which affirms the elector's intention to withdraw his or her signature from the application. The official affidavit of signature withdrawal shall be printed by the office of the Secretary of State and distributed to election superintendents. The form of the affidavit shall be substantially as prescribed in Code Section 21-4-9.

(f)(1) No application for a recall petition shall be accepted for verification if more than 15 days have elapsed since the application forms were issued to the sponsors. If an application for a recall petition contains more than one sheet, such application, when offered for filing, shall be bound together and each sheet shall be numbered consecutively at the foot of each page beginning with page one.

(2) On receipt of the application, the election superintendent shall file the application and proceed to determine the legal sufficiency of the application and determine if the signers are qualified electors eligible to sign the application. The election superintendent is granted unrestricted authority to examine the registration records maintained by the board of registrars, to receive evidence and testimony, and to require the personal appearance of any person signing such application for the purpose of making such determination. If the election superintendent finds that any signer is not a qualified elector eligible to sign the application, such signature shall not be counted in determining whether the application contains a sufficient number of signatures as required by law. The nullification of a signature on an application shall not affect the validity of other signatures contained in such application. The election superintendent shall certify the legal sufficiency or insufficiency of the application for a recall petition within five days after receiving the application, excluding Saturdays, Sundays, and legal holidays; provided, however, that the judge of the superior court may, upon proper application and good cause shown, grant an additional period of time not to exceed 15 days for the election superintendent to verify the application.

(3) The election superintendent shall immediately notify in writing the public officer named for recall in the application that a completed application for a recall petition has been filed with the election superintendent for verification.

(g) No application for a recall petition shall be amended, supplemented, or returned after it has been filed with the election superintendent for verification.

(h) Upon certifying the legal sufficiency of the application, the election superintendent shall immediately officially file the certification of the application, issue official recall petition forms, assign a number to the recall petition, which number shall appear on the face of each petition form, and issue that number to the sponsors. A record of each application, including the date of its receipt and the number assigned and issued to the sponsors, shall be maintained by the election superintendent.

(i) The election superintendent shall immediately notify in writing the public officer named for recall in the application that a recall petition has been officially issued for circulation.

(j) The official recall petition forms shall be printed by the office of the Secretary of State and distributed to election superintendents. The form of the petition shall be as provided in Code Section 21-4-7.

History.

Code 1981, § 21-4-5, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1990, p. 1939, §§ 2-4; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 23, § 3; Ga. L. 2001, p. 230, § 19.

Editor's notes.

Ga. L. 1990, p. 1939, § 8, not codified by the General Assembly, provides that the Act shall only apply to recall proceedings under Chapter 4 of Title 21 which are instituted on or after July 1, 1990.

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 114 (2001).

For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided prior to the 1989 revision of this chapter including former Code 1933 are included in the annotations for this Code section.

Initiation of second recall effort. — Former Code 1933, §§ 89-1905 and 89-1914 (see now O.C.G.A. §§ 21-4-5 and 21-4-14) represent only constraints upon initiation of second recall effort notwithstanding previous but unsuccessful recall efforts made against the same public officer. 1981 Op. Att'y Gen. No. U81-11.

Application of 180-day rule to person appointed or elected to unexpired term. — O.C.G.A. § 21-4-5(a) does not operate to bar the filing of an application for a recall petition during the first 180 days served by a person appointed or elected to fill an unexpired term of office of a public official, unless the attempted filing occurs during the first or last 180 days of the original term of office. 1992 Op. Att'y Gen. No. 92-12.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, §§ 204, 206, 207, 213.

C.J.S.
67 C.J.S., Officers and Public Employees, § 272.

21-4-6. Review of grounds for recall petition.

(a) Within four days after the date of submission of the application for a recall petition for verification, excluding Saturdays, Sundays, and legal holidays, the officer sought to be recalled may file a petition in the superior court of the county in which such officer is domiciled applying for a review of the sufficiency of the ground or grounds for the recall and the fact or facts upon which such ground or grounds are based as set forth in such recall application.

(b) The superior court having jurisdiction of a case governed by this chapter shall be presided over by a superior court judge or senior judge. The superior court judge or senior judge who presides over the case shall be selected as set out in subsection (c) of this Code section.

(c) Upon the filing of a sufficiency review petition under this Code section, the clerk of superior court having jurisdiction shall immediately notify the administrative judge for the judicial administrative district in which that county lies, or the district court administrator, who shall immediately notify the administrative judge of the institution of proceedings under this chapter. If the county in which the proceedings were instituted is not in the circuit of the administrative judge, the administrative judge shall select a superior court judge from within the district, but not from the circuit in which the proceeding was instituted, or a senior judge who is not a resident of the circuit in which the proceeding was instituted, to preside over the contest.

(d) If the administrative judge is a member of the circuit in which the proceeding was filed, or if the other judges of the district are unable or are unwilling to preside over the proceeding, or if the other judges of the district are judges of the circuit in which the proceeding was filed, then the administrative judge shall select an administrative judge of an adjoining district to select a superior court judge from that district, or a superior court judge from the district in which the proceeding was filed, but not the circuit in which the proceeding was filed, or a senior judge who is not a resident of the circuit wherein the proceeding was filed.

(e) After a judge has agreed to preside over the case, the administrative judge who selected the judge to hear the matter shall enter an order in the superior court of the county where the proceeding was filed appointing such judge, and such judge shall promptly begin presiding over such proceedings in such court and shall determine same as soon

as practicable. Such judge shall be reimbursed for his actual expenses for food and lodging and shall receive the same mileage as any other state officials and employees. Senior judges shall be entitled to compensation and reimbursement as the law provides for senior judge service.

(f) Such review shall be limited solely to a review of the legal sufficiency of the recall ground or grounds and the legal sufficiency of the alleged fact or facts upon which such ground or grounds are based as set forth in such recall application. The review of such alleged fact or facts shall include a determination of whether probable cause exists to believe that such alleged fact or facts are true. The burden shall be on the petition chairperson to prove that such probable cause exists. The judge shall consider such review petitions on an expedited basis. Discovery shall be permitted but shall not delay the consideration of the review petition by the judge. The judge may enter such orders as the judge deems necessary and appropriate to expedite any discovery and the consideration of the review petition.

(g) During the pendency of the review by the superior court, all other recall proceedings shall be suspended. If a ruling of sufficiency is rendered by such judge, then recall proceedings shall continue in the manner provided for in this chapter. The time for circulating a recall petition after the review of the sufficiency petition shall begin from the date of the order of the superior court or the issuance of recall petition forms, whichever is later, notwithstanding the fact that recall petition forms were issued before the filing of the petition for review of the sufficiency of the recall application. Valid signatures obtained on a recall petition prior to the filing of a petition for review of the sufficiency of a recall application shall be counted. The officer sought to be recalled may file a discretionary appeal in the Supreme Court of Georgia within ten days after the date of an order finding a recall application sufficient, excluding Saturdays, Sundays, and legal holidays, and such court shall consider such appeal on an expedited basis. The filing of such appeal shall not operate to stay the recall proceedings. If a ruling of insufficiency is rendered by such judge, then a discretionary appeal may be filed in the Supreme Court of Georgia within ten days after the date of such ruling, excluding Saturdays, Sundays, and legal holidays, and such court shall consider such appeal on an expedited basis.

History.

Code 1981, § 21-4-6, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1990, p. 1939, §§ 5, 6; Ga. L. 1991, p. 608, § 3; Ga. L. 1998, p. 1107, § 1.

Editor's notes.

Ga. L. 1990, p. 1939, § 8, not codified by the General Assembly, provides that the Act shall only apply to recall proceedings under Chapter 4 of Title 21 which are instituted on or after July 1, 1990.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, cases decided prior to the 1989 revision of this chapter are included in the annotations for this Code section.

Constitutionality of procedure for review of recall petition. — The recall "condition" provided in O.C.G.A. § 21-4-6(f) is not unconstitutional as denying an elected official an opportunity for a judicial hearing to determine the truth or falsity of the alleged facts upon which the recall application is based. Collins v. Morris, 263 Ga. 734, 438 S.E.2d 896, 1994 Ga. LEXIS 52 (1994).

Rules of evidence are applicable in a hearing to determine the sufficiency of a recall application. DeLong v. Welch, 272 Ga. 730, 533 S.E.2d 724, 2000 Ga. LEXIS 632 (2000).

Determining sufficiency of factual allegations. — To determine if the "fact or facts upon which such ground or grounds are based" are legally sufficient, a court should consider the following: 1) assuming the fact or facts to be true, do they allege misconduct which constitutes a legally sufficient ground for recall according to the statutory definition of that term; 2) if so, are the fact or facts stated with "reasonable particularity." Brooks v. Branch, 262 Ga. 658, 424 S.E.2d 277, 1993 Ga. LEXIS 69 (1993).

Since the factual allegations were either a mere conclusion, lacking reasonable particularity, or failed to allege conduct which would constitute one of the statutory grounds for recall, they were legally insufficient to support grounds for recall. Brooks v. Branch, 262 Ga. 658, 424 S.E.2d 277, 1993 Ga. LEXIS 69 (1993).

Determining sufficiency. — Because neither discovery nor an evidentiary hearing is permitted at the review stage of the recall proceedings, it is imperative that the application state with clarity and specificity the facts supporting the grounds for recall such that both the public and the official sought to be recalled are properly notified of the violation alleged to have been committed. The standard for determining the "legal sufficiency" of a factual allegation is whether it states "with reasonable particularity a ground for recall." Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650, 1994 Ga. LEXIS 78 (1994).

Application of "reasonable grounds", definition of probable cause. — Trial court did not err in applying the "reasonable grounds" definition of probable cause in determining whether there was probable cause to believe that the factual allegations in a recall application were true. DeLong v. Welch, 272 Ga. 730, 533 S.E.2d 724, 2000 Ga. LEXIS 632 (2000).

Mere conclusions legally insufficient. — Where a petition under the Recall Act of 1989, O.C.G.A. § 21-4-1 et seq., was filed against a county school board member, the allegations of the petition were nothing more than mere conclusions and failed to set out the alleged fact or facts upon which such ground or grounds are based. Hamlett v. Hubbard, 262 Ga. 279, 416 S.E.2d 732, 1992 Ga. LEXIS 429 (1992).

Conduct of a public official who participates in a closed meeting that is required by law to be open can become a "ground for recall" under the Recall Act, O.C.G.A. § 21-4-1 et seq., if the circumstances of that participation come within the definition of "grounds for recall." Steele v. Honea, No. S91A1106, 1991 Ga. LEXIS 1043 (Ga. Nov. 1, 1991).

Privilege. — Allegations made in recall petitions are not absolutely privileged, but are only conditionally privileged as "comments upon the acts of public men in their public capacity and with reference thereto." Davis v. Shavers, 225 Ga. App. 497, 484 S.E.2d 243.

Applications were not legally insufficient. — Recall applications based on a violation of the Open Meetings Act, O.C.G.A. T. 50, Ch. 14 were not legally insufficient because they did not specify dates and places, did not positively allege that a quorum was present at the closed meeting, and that the violation was willful and knowing. Phillips v. Hawthorne, 269 Ga. 9, 494 S.E.2d 656.

RESEARCH REFERENCES

ALR.

Sufficiency of particular charges as affecting enforceability of recall petition, 114 A.L.R.5th 1.

Sufficiency of technical and procedural aspects of recall petitions, 116 A.L.R.5th 1.

21-4-7. Form of recall petition.

(a) The form of the recall petition shall be substantially as follows:

RECALL PETITION

_____
(Official application no.)

_____
(County or city)

To _____
(Name of election superintendent)

_____
(Address)

_____
(City, state, ZIP Code)

We, the electors registered to vote in the recall election herein petitioned, demand the recall of _____ (Name and office) on the grounds that said official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interest of the public and that said official _____ (State the appropriate ground or grounds for recall as set forth in subparagraph (B) of paragraph (7) of Code Section 21-4-3 and a brief statement, not to exceed five lines, of the fact or facts upon which such ground or grounds are based.).

Name	Date of Signing	Residence Address	County of Residence
(Signature)		(Number and street or route)	
(Printed name of elector)			(City)

(Ten lines for signatures and printed names)

(b) The following statements shall be written or printed on each

petition and each signer must read, or be read, the following statements:

"(1) Any person who gives or receives money or any other thing of value for signing a recall petition or for signing an affidavit of signature withdrawal shall be guilty of a misdemeanor;

(2) If (insert appropriate number) electors sign this petition, there will be an election at which a majority of the electors voting therein will determine whether the above-named official will be removed from office."

(c) Each recall petition shall contain a statement specifically designating the name and office of the official sought to be recalled, a statement that the named official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public, a statement containing the appropriate ground or grounds for recall as set forth in subparagraph (B) of paragraph (7) of Code Section 21-4-3, and a brief statement of the fact or facts upon which such ground or grounds are based. Such statements shall be written or printed on each petition and each signer must read, or be read, such statements.

History.
Code 1981, § 21-4-7, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1992, p. 56, § 1.

21-4-8. Circulation of recall petition; electors eligible to sign; procedures for collection and verification of signatures.

(a) All signers of a single recall petition shall be electors who are registered and eligible to vote in the recall election and who reside in the electoral district of the officer sought to be recalled. When a petition for the recall of a public official is circulated in more than one county, each sheet of the petition shall bear the name of the county in which it is circulated, and only electors of the designated county may sign such sheet. No recall petition shall be circulated or signed by any person in any location where alcoholic beverages are sold or served.

(b) Every elector signing a recall petition shall do so in the presence of the person circulating the petition, who is to execute the affidavit of verification on the reverse side of the petition form. At the time of signing, the elector shall sign his name, and such elector or the person circulating the petition shall print the name of the elector below the elector's signature and shall print or write in the appropriate spaces following the signature the elector's residence address, giving number and street or route and city, the name of the county, and the date on which the elector signed the petition. No notary public may sign the

petition as an elector or serve as a circulator of any petition which he or she notarized. Any and all sheets of a recall petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the recall petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected.

(c) If an elector is incapable of signing his or her own name, he or she may specifically request the circulator of the petition to sign and print his or her name and complete the information required on the petition sheet to accompany the signature; provided, however, that the circulator shall also sign his or her full name beside the printed name of such elector.

(d) The person before whom the electors signed the recall petition shall verify, in an affidavit subscribed and sworn to by him or her before a notary public, that each of the names on the petition form was signed in his or her presence on the date indicated and that in his or her belief each signer was an elector of the electoral district of the officer sought to be recalled.

(e) The affidavit printed on the reverse side of each recall petition form shall be in the following form:

AFFIDAVIT OF CIRCULATOR

State of Georgia

County of _____

Under the penalty of a violation of Code Section 16-10-71 of the Official Code of Georgia Annotated, relating to false swearing, punishable by a fine not to exceed $1,000.00 or by imprisonment of not less than one nor more than five years, or both, I do depose and say that I am an elector registered to vote in the recall election herein petitioned for and that each petitioner signed or caused to be signed the foregoing petition in my presence on the date indicated; and I believe that each signer's name and residence address are correctly stated, and that each signer is an elector of the electoral district in which such recall election will be conducted, and that each signer has read, or was read, the required statements which are also set out on each petition.

(Signature of affiant) _____

(Residence address) _____
(Number and street or route)

_____
(City)

Subscribed and sworn to
before me this _____
day of _____, _____.

_____
Notary public
_____, Georgia

My commission expires on the _____ day of _____, _____.

(f) An elector may change the way his or her signature and residence address appear on the recall petition at any time prior to the filing of the petition for verification by striking through his or her name and initialing the strike-through and re-signing the petition with his or her printed name corrected accordingly.

History.
Code 1981, § 21-4-8, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 23, § 4.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, cases decided prior to the 1989 revision of this chapter and under former Code 1933, § 89-1907 are included in the annotations for this Code section.

Legislative intent of this section was to make sure that only eligible electors' names appear on the recall petition. Segars v. Bramlett, 245 Ga. 386, 265 S.E.2d 279, 1980 Ga. LEXIS 806 (1980) (decided under former Code 1933, § 89-1907).

Purpose of printing the elector's name on the recall petition is legibility; to identify the person signing the petition in the event that the signer's name cannot be deciphered from the signature. Segars v. Bramlett, 245 Ga. 386, 265 S.E.2d 279, 1980 Ga. LEXIS 806 (1980) (decided under former Code 1933, § 89-1907).

Solicitations of signatures in private shopping malls. — Nothing in the Georgia Constitution or the Recall Act of 1989, O.C.G.A. § 21-4-1 et seq., either separately or together, establishes a right of private citizens to enter onto privately owned shopping malls to solicit signatures for a recall petition. Citizens for Ethical Gov't, Inc. v. Gwinnett Place Assoc., 260 Ga. 245, 392 S.E.2d 8, 1990 Ga. LEXIS 231 (1990).

Elector incapable of signing. — The statute governing recall elections does not permit one person to sign any but his or her own name except as provided in former § 21-4-7(c) (see O.C.G.A. § 21-4-8) as to the requesting circulator of a petition to sign for an elector incapable of signing. Howell v. Tidwell, 258 Ga. 246, 368 S.E.2d 311, 1988 Ga. LEXIS 225 (1988) (decided under former § 21-4-7 prior to the 1989 revision).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided prior to the 1989 revision of this chapter and Ga. L. 1979, p. 1612 are included in the annotations for this Code section.

Electors eligible. — Only voters in district now represented by officer in question may sign the petition for recall. 1979 Op. Att'y Gen. No. U79-20 (decided under Ga. L. 1979, p. 1612).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 209.

C.J.S.
67 C.J.S., Officers and Public Employees, § 272.

21-4-9. Withdrawal of signatures from recall application or petition.

(a) At any time prior to the date an application for recall petition or a recall petition is filed for verification, an elector who has signed the application or the recall petition form may request withdrawal of his or her signature from the application or recall petition by executing and filing an affidavit, in the form prescribed by this Code section, with the election superintendent. Any signature so withdrawn shall not be counted in determining the legal sufficiency of the application or recall petition. The affidavit shall:

(1) Be signed and sworn to before a notary public;

(2) State the elector's residence address, giving number and street or route and city, the name of the county of residence, and, in the case of a recall application or petition, the number of the recall application or petition which he or she signed; and

(3) Affirm the elector's intention to withdraw his or her signature from the application or recall petition.

(b) The affidavit shall be substantially in the following form:

AFFIDAVIT OF SIGNATURE WITHDRAWAL

State of Georgia

County of _____

I, _____ (Name as it appears on the application or recall petition), being first duly sworn, say that I am an elector of the _____ (electoral district) in which the recall election will be conducted.

That my residence address is _____

_____

(Number and street or route) (City)

That I signed or caused to be signed the application or the petition for the recall of _____ (Name and office of person sought to be recalled) and that the recall application or petition has been assigned number _____.

That it is my intention by the signing and filing of this affidavit to withdraw my signature therefrom.

_____

Signature of elector

Subscribed and sworn to
before me this _____
day of _____, _____.

_____

Notary public
_____, Georgia

My commission expires on the _____ day of _____, _____.

History. Code 1981, § 21-4-9, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1999, p. 21, § 1.

21-4-10. Persons who may not circulate recall application or petition; effect of signatures obtained by unqualified persons.

No registration officer or other person authorized by law to register electors and no person other than an elector of the electoral district of the officer sought to be recalled shall circulate a recall application or petition. No employee of the state shall circulate a recall application or petition. All signatures obtained by any such unqualified person shall be void and shall not be counted in determining the legal sufficiency of the petition.

History. Code 1981, § 21-4-10, enacted by Ga. L. 1989, p. 1721, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 209.

C.J.S.
67 C.J.S., Officers and Public Employees, § 272.

21-4-11. Determination of legal sufficiency of recall petition; time period for filing; amendments; notification of legal sufficiency.

(a) The election superintendent shall be responsible for determining the legal sufficiency of the recall petition within 30 days after it has been filed with him or her; provided, however, that in cases where more than one recall petition is subject to review for verification, the election superintendent shall be responsible for determining the legal sufficiency of any recall petition within 45 days after it has been filed with him or her. The election superintendent or a designee is granted unrestricted authority to examine the registration records maintained by the board of registrars, to receive evidence and testimony, and to require the personal appearance of any person signing such recall petition for the purpose of determining if the signers are qualified electors eligible to sign the recall petition. If the election superintendent shall not be reasonably able to ascertain that any signature is that of a qualified elector eligible to sign the recall petition, such signature shall not be counted in determining whether the petition contains a sufficient number of signatures as required by law. The nullification of a signature on any sheet of the recall petition shall not affect the validity of other signatures contained on such sheet.

(b) A recall petition shall not be accepted for verification for:

(1) Any state-wide office if more than 90 days have elapsed since the date the official recall petition forms were issued to the sponsors;

(2) Any officer holding an office other than state-wide office and for whom not less than 5,000 signatures are required for the recall petition under paragraph (2) of subsection (a) of Code Section 21-4-4 if more than 45 days have elapsed since the date the official recall petition forms were issued to the sponsor; or

(3) Any officer holding an office other than a state-wide office and for whom less than 5,000 signatures are required under paragraph (2) of subsection (a) of Code Section 21-4-4 if more than 30 days have elapsed since the date the official recall petition forms were issued to the sponsors.

(c)(1) No recall petition shall be amended, supplemented, or returned after it has been filed with the election superintendent for verification.

(2) If a recall petition contains more than one sheet, such recall petition shall, when offered for filing, be bound together and each sheet shall be numbered consecutively at the foot of each page beginning with page one.

(d) Within five days, excluding Saturdays, Sundays, and legal holidays, after the election superintendent has certified the legal sufficiency of a petition, he or she shall immediately notify the Governor or the appropriate official, who shall call the recall election as provided in Code Section 21-4-13.

(e) Upon certifying the legal sufficiency or insufficiency of a recall petition, the election superintendent shall immediately notify the petition chairman and the officeholder in writing of the results and officially file the certification of the petition.

History.
Code 1981, § 21-4-11, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1990, p. 1939, § 7.

Editor's notes.
Ga. L. 1990, p. 1939, § 8, not codified by the General Assembly, provides that the Act shall only apply to recall proceedings under Chapter 4 of Title 21 which are instituted on or after July 1, 1990.

21-4-12. No recall election when officeholder resigns prior to the holding of a recall election.

If an officeholder resigns prior to the holding of a recall election no recall election shall be conducted.

History.
Code 1981, § 21-4-12, enacted by Ga. L. 1989, p. 1721, § 1.

21-4-13. Procedures for recall election; number of votes required to effectuate recall; special election to fill vacancy created.

(a) Within ten days after having received certification of the sufficiency of the recall petition by the election superintendent, a recall election shall be called and published, as provided in this Code section, and shall be conducted not less than 30 days nor more than 45 days after such call; provided, however, that, if a primary or general election is to be held not less than 30 days nor more than 45 days after such call is issued, the recall election shall be conducted on that date.

(b) A recall election shall be called:

(1) By the Governor, if for a state officer;

(2) By the election superintendent of the county, if for a county officer; or

(3) By the election superintendent of the municipality, if for a municipal officer.

(c) If a recall petition is against an officer who is directed by this Code section to call the election, it shall be called:

(1) By the Secretary of State, if for the Governor; or

(2) By the clerk of the superior court, if for the judge of the probate court and such judge serves as the election superintendent of the county.

(d) The official call for such election shall be published one time as follows:

(1) In a newspaper of general circulation in the electoral district, if such election is for a state officer;

(2) In the official organ of the county, if such election is for a county officer; or

(3) In the official gazette of the municipality, if such election is for a municipal officer.

(e) It shall be the duty of the appropriate official authorized by law to conduct elections to hold and conduct the recall election and to declare and certify the results; provided, however, that if the person sought to be recalled is the official authorized by law to conduct elections, the clerk of the superior court of the county in which such recall election is to be held shall hold and conduct the recall election and declare and certify the results. The ballot for the recall election shall state the name and office of the person whose recall has been petitioned, and the ballot shall be in the form prescribed by law for state, county, or municipal officers. The ballot shall have written or printed thereon the following:

"[ ] YES Shall (name of officeholder), (name of office), be recalled and removed from public office on the

[ ] NO grounds that said official has, while holding public office, conducted himself or herself in a manner which relates to and adversely affects the administration of his or her office and adversely affects the rights and interests of the public and on the ground(s) that such official _____ (State the appropriate ground or grounds for recall as set forth in subparagraph (B) of paragraph (7) of Code Section 21-4-3.)?"

If more than one public officer is subject to a recall election in the same precinct, the election superintendent may prepare a recall ballot so as

to include on a single ballot separate recall questions for each of the officers sought to be recalled.

(f) Those persons desiring to vote in favor of recall shall vote "Yes," and those persons desiring to vote against recall shall vote "No." If more than one-half of the votes cast on such question are in favor of recall, the public office in question shall immediately become vacant. Otherwise, the public official named in the recall petition shall continue in office.

(g) A special election shall be called by the appropriate state or local official to fill a vacancy created by recall. The special election shall be called within ten days after the date of the recall election and shall be conducted at least 30 days but not more than 45 days following the call. If no official is specifically designated by law or if the appropriate official has been recalled, the Governor shall issue the call for a special election to fill the vacancy created by recall. Any person who has been recalled from office under this chapter shall be eligible to offer for election to fill the vacancy created by recall.

History.
Code 1981, § 21-4-13, enacted by Ga. L. 1989, p. 1721, § 1; Ga. L. 1993, p. 118, § 1.

Cross references.
Filling of vacancies in public offices generally, T. 45, C. 5 and § 45-12-50 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided prior to the 1989 revision of this chapter and under former § 21-4-12 are included in the annotations for this Code section.

Filling vacancy on county school board. — Former O.C.G.A. §§ 21-4-11 and 21-4-12(g) (see O.C.G.A. § 21-4-13) govern the manner of filling a vacancy on a county school board created by the resignation of a member of the county school board subsequent to the filing of an application for a recall petition, but prior to a recall election, or as a result of a recall election, respectively. 1985 Op. Att'y Gen. No. 85-46 (decided under former § 21-4-12 prior to 1989 revision).

Duty to run county school system between time of recall and special election. — The county school superintendent is charged with the duty of continuing to effectuate and enforce the rules, regulations, and instructions of the county board of education and continuing to operate the county school system during the period of time between the successful recall of all or a majority of the county board of education and the filling of the vacancies on the county board of education by special election. 1985 Op. Att'y Gen. No. U85-43 (decided under former § 21-4-12 prior to 1989 revision).

RESEARCH REFERENCES

Am. Jur. 2d.
63C Am. Jur. 2d, Public Officers and Employees, § 207.

C.J.S.
67 C.J.S., Officers and Public Employees, § 271 et seq.

21-4-14. Limitations on subsequent recall petitions following recall election.

(a) After a recall petition and election, no further recall petition shall be filed against the same officer until at least six months have elapsed from the date of the previous recall election; and any other recall petitions against that officer outstanding on the date of the recall election shall be void.

(b) If the election superintendent finds that a recall petition is insufficient and fails to verify the same, no further application for a recall petition shall be filed against the same officer until at least six months have elapsed from the date of the denial of such recall petition; provided, however, that such finding of insufficiency shall not bar the verification of any other recall petition against that officer which is available for signature or pending verification at the time of such finding of insufficiency.

History.
Code 1981, § 21-4-14, enacted by Ga. L. 1989, p. 1721, § 1.

JUDICIAL DECISIONS

Determination of the legal insufficiency of the original application for a recall petition was not a bar to filing a second application within six months of the first application. Collins v. Morris, 263 Ga. 734, 438 S.E.2d 896, 1994 Ga. LEXIS 52 (1994).

A judicial determination that a recall petition was issued in violation of the Recall Act, O.C.G.A. § 21-4-1 et seq., is not a bar to a subsequent petition. George v. Baker, 265 Ga. 858, 463 S.E.2d 124, 1995 Ga. LEXIS 896 (1995).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided prior to the 1989 revision of this chapter and under former Code 1933, § 89-1914 are included in the annotations for this Code section.

Initiation of second recall effort. — Former Code 1933, §§ 89-1905 and 89-1914 (see now O.C.G.A. §§ 21-4-5 and 21-4-14) represent only constraints upon initiation of second recall effort notwithstanding previous but unsuccessful recall efforts made against the same public officer. 1981 Op. Att'y Gen. No. U81-11 (decided under former Code 1933, § 89-1914).

21-4-15. Manner of conducting recall elections.

The powers, duties, and penalties conferred or imposed by law upon public officials who conduct special elections are conferred and imposed upon public officials conducting recall elections. All such elections shall be conducted in the same manner as special elections and in accordance with Chapters 2 and 3 of this title.

History.
Code 1981, § 21-4-15, enacted by Ga. L. 1989, p. 1721, § 1.

21-4-16. Campaign and financial disclosure requirements, restrictions, and qualifications.

Any person sponsoring or opposing a recall petition under this chapter shall be subject to Chapter 5 of this title, the "Ethics in Government Act," in the same manner as candidates; and the petition chairperson shall file the reports required to be filed under said chapter and shall be subject to the same restrictions, qualifications, and provisions contained in such chapter.

History.
Code 1981, § 21-4-16, enacted by Ga. L. 1989, p. 1721, § 1.

21-4-17. Promulgation of rules and regulations by Secretary of State.

The Secretary of State is authorized to promulgate such rules and regulations as are necessary to carry out this chapter.

History.
Code 1981, § 21-4-17, enacted by Ga. L. 1989, p. 1721, § 1.

21-4-18. Application to court to compel election superintendent to comply with chapter; jurisdiction and venue of actions against election superintendent.

(a) If the election superintendent fails to comply with this chapter, any elector may apply, within ten days after such refusal, to the superior court for a writ of mandamus to compel the election superintendent to perform his or her official duties. If the court finds that the election superintendent has not complied with this chapter, the court shall issue an order for the election superintendent to comply.

(b) An action against an election superintendent shall be filed in the superior court of the county of such election superintendent, except that an action against the Secretary of State shall be filed in the Superior Court of Fulton County.

History.
Code 1981, § 21-4-18, enacted by Ga. L. 1989, p. 1721, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided prior to the 1989 revision of this chapter including former § 21-4-17 are included in the annotations for this Code section.

Mandamus action to compel probate judge to verify signatures. — When plaintiffs filed a mandamus action to force a probate judge to properly verify the signatures on a recall petition and notwithstanding a reference to O.C.G.A. § 21-2-521, a section on contesting results of primaries or elections, and the inclusion of prayers for equitable relief, the complaint stated a claim under former O.C.G.A. § 21-4-17 (see now O.C.G.A. § 21-4-18), and its dismissal was error. Howell v. Tidwell, 256 Ga. 647, 352 S.E.2d 372, 1987 Ga. LEXIS 560 (1987) (decided under former § 21-4-17).

Mandamus not appropriate remedy. — Suit for equitable relief, not an action for mandamus, was proper remedy for elected officials contending that election superintendent's actual past performance of duties was in noncompliance with the Recall Act, O.C.G.A. § 21-4-1 et seq., and would lead to scheduling an unauthorized recall election. Hunter v. George, 265 Ga. 573, 458 S.E.2d 830, 1995 Ga. LEXIS 524 (1995).

21-4-19. Determination of eligibility to sign application for recall petition or petition for recall.

An elector's eligibility to sign an application for a recall petition or a petition for recall shall be determined as of the date immediately preceding the date the application or petition is signed by that elector.

History.
Code 1981, § 21-4-19, enacted by Ga. L. 1989, p. 1721, § 1.

21-4-20. Giving or receiving money or other thing of value to sign petition or affidavit; compelling person to sign petition or to remove name; signing another's name to petition; signing more than one; signing by ineligible person.

(a) Any person who gives or receives money or any other thing of value for signing a recall application or petition or for signing an affidavit of signature withdrawal shall be guilty of a misdemeanor.

(b) A person who, by menace or threat either directly or indirectly, induces or compels or attempts to induce or compel any other person to sign or subscribe or to refrain from signing or subscribing that person's name to a recall application or petition or, after signing or subscribing that person's name, to have that person's name taken therefrom shall be guilty of a misdemeanor.

(c) A person who signs any name other than his or her own to a recall application or petition, except in a circumstance where he or she signs for a person in the presence of and at the specific request of such person who is incapable of signing that person's own name, or who knowingly

signs his or her name more than once for the same recall application or petition or who knowingly is not at the time of signing a qualified elector of the electoral district of the officer sought to be recalled shall be guilty of a misdemeanor.

History.
Code 1981, § 21-4-20, enacted by Ga. L. 1989, p. 1721, § 1.

21-4-21. Construction of chapter.

This chapter is supplementary to any other methods provided by general law for removing a public official from office; and nothing in this chapter shall be construed as abridging or repealing such laws.

History.
Code 1981, § 21-4-21, enacted by Ga. L. 1989, p. 1721, § 1.

CHAPTER 5

GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE

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Cross references.

Ethics and Efficiency in Government Act, T. 28, C. 11.

Codes of ethics and conflicts of interest relating to public officers and employees, T. 45, C. 10.

Editor's notes.

Ga. L. 1986, p. 957, § 1, effective April 3, 1986, repealed the former chapter, the "Campaign and Financial Disclosure Act", and enacted the present chapter. The former chapter consisted of §§ 21-5-1 through 21-5-5, 21-5-5.1, 21-5-6 through 21-5-10, 21-5-10.1, 21-5-11, 21-5-11.1, and 21-5-12 through 21-5-14 and was based on Ga. L. 1974, p. 155, §§ 1 through 10; Ga. L. 1975, p. 1120, §§ 1 through 3, 3A, 4, 5 through 7, 7A, 9, 10, 12, 12A; Ga. L. 1976, p. 1423, §§ 1 through 5; Ga. L. 1977, p. 1302, §§ 1 through 10, 12 through 19; Ga. L. 1979, p. 602, §§ 1 through 6; Ga. L. 1980, p. 724, §§ 1 through 3; Ga. L. 1981, p. 851, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 764, §§ 1 to 7; Ga. L. 1984, p. 1100, § 1; Ga. L. 1985, p. 206, § 1; and Ga. L. 1986, p. 855, § 8.

Ga. L. 1992, p. 1075, § 1, effective April 6, 1992, not codified by the General Assembly, provides that that Act is entitled "The Public Officials Conduct and Lobbyist Disclosure Act of 1992."

Administrative rules and regulations.

Organization, practice and procedure, and other provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-1 et seq.

Law reviews.

For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

For annual survey of local government law, see 40 Mercer L. Rev. 303 (1988).

For article, "Georgia's New Ethics Laws: A Summary of the Changes Relevant to Lobbyists and Legislators," see 11 Ga. St. B. J. 22 (No. 4, 2005).

For article, "Georgia's New Ethics Laws: A Summary of the Changes Relevant to Candidates, Campaigns and Contributors," see 11 Ga. St. B. J. 16 (No. 6, 2006).

For article, "SB 221: The Creation of Election Leadership Committees," see 38 Ga. St. U.L. Rev. 155 (2021).

For note on 1990 amendment of Code

sections within this chapter, see 7 Ga. St. U. L. Rev. 279 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under the former chapter and Code Section 21-5-10 are included in the annotations for this chapter.

Basic purpose of the former chapter was to provide the electorate with information about fiscal contributions made to, and expenditures made by, those who seek public office; to be of reasonable value, and to avoid confusion both in the mind of the general public and in the administrative supervision and enforcement of this chapter, uniformity of reporting, both as to substance and procedure, was highly desirable, if not a practical necessity. 1976 Op. Att'y Gen. No. 76-22 (decided under former chapter).

Chapter superseded in entirety. — Ga. L. 1986, p. 957, which by its terms struck O.C.G.A. T. 21, Ch. 5 in its entirety and replaced it with a new O.C.G.A. T. 21, Ch. 5, is intended as a complete substitute for the former chapter and superseded it in its entirety on March 1, 1987. 1986 Op. Att'y Gen. No. 86-50.

Enforcement of former law. — The State Ethics Commission may enforce all filing requirements of the law in effect until March 1, 1987, which are continued in effect under the provisions of Ga. L. 1986, p. 957. 1986 Op. Att'y Gen. No. 86-50.

Actions brought to enforce the provisions of the law in effect until March 1, 1987, which are continued in force and effect under the new law may proceed under the new law. 1986 Op. Att'y Gen. No. 86-50.

Applicability of advisory opinions. — To the extent that the provisions of this chapter in effect until March 1, 1987, are continued under Ga. L. 1986, p. 957, the opinions of the Attorney General interpreting the provisions will continue to be applicable until and unless they are modified by subsequent opinion, judicial decision, or other change in law, and although the opinions issued by the State Campaign and Financial Disclosure Commission are not binding on the new State Ethics Commission, the advisory opinions of the State Campaign and Financial Disclosure Commission will be persuasive authority as to the provisions of law which continue under the new law. 1986 Op. Att'y Gen. No. 86-50.

Expenditures made independently of a candidate, including expenditures in favor of or opposing a candidate, are not subject to the dollar limitations and reporting and registration requirements of O.C.G.A. T. 21, C. 5. 1995 Op. Att'y Gen. No. 95-26.

Special treatment of public officials by municipal utilities. — Special treatment of public employees and officials by a municipally owned and operated public utility system may need to be disclosed under O.C.G.A. T. 21, C. 5. 2000 Op. Att'y Gen. No. 2000-4.

RESEARCH REFERENCES

ALR.

Constitutionality of corrupt practices acts, 69 A.L.R. 377.

ARTICLE 1

GENERAL PROVISIONS

21-5-1. Short title.

This chapter shall be known as and may be cited as the "Georgia Government Transparency and Campaign Finance Act."

History.
Code 1981, § 21-5-1, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 2022, p. 3, § 2/SB 120.

The 2022 amendment, effective March 2, 2022, substituted "Georgia Government Transparency and Campaign Finance Act" for "Ethics in Government Act".

21-5-2. Declaration of policy.

It is declared to be the policy of this state, in furtherance of its responsibility to protect the integrity of the democratic process and to ensure fair elections for constitutional offices; state offices; district attorneys; members of the Georgia House of Representatives and Georgia Senate; all constitutional judicial officers; and all county and municipal elected officials, to institute and establish a requirement of public disclosure of campaign contributions and expenditures relative to the seeking of such offices, to the recall of public officers holding elective office, and to the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in any county or municipal election. Further, it is the policy of this state that the state's public affairs will be best served by disclosures of significant private interests of public officers and officials which may influence the discharge of their public duties and responsibilities. The General Assembly further finds that it is for the public to determine whether significant private interests of public officers have influenced the state's public officers to the detriment of their public duties and responsibilities and, in order to make that determination and hold the public officers accountable, the public must have reasonable access to the disclosure of the significant private interests of the public officers of this state.

History.
Code 1981, § 21-5-2, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 1; Ga. L. 2005, p. 859, § 1/HB 48.

Editor's notes.
Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.
For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

21-5-3. Definitions.

As used in this chapter, the term:

(1) "Business entity" means any corporation, sole proprietorship, partnership, limited partnership, limited liability company, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.

(2) "Campaign committee" means the candidate, person, or committee which accepts contributions or makes expenditures designed to bring about the nomination or election of an individual to any elected office. The term "campaign committee" also means any person or committee which accepts contributions or makes expenditures designed to bring about the recall of a public officer holding elective office or to oppose the recall of a public officer holding elective office or any person or any committee which accepts contributions or makes expenditures designed to bring about the approval or rejection by the voters of any proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state.

(3) "Campaign contribution disclosure report" means a report filed with the commission by a candidate or the chairperson or treasurer of a campaign committee setting forth all expenditures of more than $100.00 and all contributions of more than $100.00, including contributions and expenditures of lesser amounts when the aggregate amount thereof by or to a person is more than $100.00 for the calendar year in which the report is filed. Such report shall also include the total amount of all individual contributions received or expenditures made of less than $100.00 each. The first report required in the calendar year of the election shall contain all such expenditures made and all such contributions received by the candidate or the committee in prior years in support of the campaign in question.

(4) "Candidate" means an individual who seeks nomination for election or election to any public office, whether or not such an individual is elected; and a person shall be deemed to seek nomination or election if such person has taken necessary action under the laws of this state to qualify such person for nomination for election or election or has received any contributions or made any expenditures in pursuit of such nomination or election or has given such person's consent for such person's campaign committee to receive contributions or make expenditures with a view to bringing about such person's nomination for election or election to such office.

(5) "Commission" means the State Ethics Commission created under Code Section 21-5-4.

(6) "Connected organization" means any organization, including any business entity, labor organization, membership organization, or cooperative, which is not a political action committee as defined in this Code section, but which, directly or indirectly, establishes or administers a political action committee or which provides more than 40 percent of the funds of the political action committee for a calendar year.

(7) "Contribution" means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office. The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate.

(8) "Direct ownership interest" means the holding or possession of good legal or rightful title of property or the holding or enjoyment of real or beneficial use of the property by any person and includes any interest owned or held by a spouse of such person if such interest is held jointly or as tenants in common between the person and spouse.

(9) "Election" means a primary election; run-off election, either primary or general; special election; or general election. The term "election" also means a recall election.

(10) "Election cycle" means the period from the day following the date of an election or appointment of a person to elective public office through and including the date of the next such election of a person to the same public office and shall be construed and applied separately for each elective office.

(11) "Election year" shall be construed and applied separately for each elective office and means for each elective office the calendar year during which a regular or special election to fill such office is held.

(12) "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or any transfer of money or anything of value made for the purpose of influencing the nomination for election or election of any person, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "expenditure" shall also include the payment of a qualifying fee for and on behalf of a candidate.

(13) "Fiduciary position" means any position imposing a duty to act primarily for the benefit of another person as an officer, director, manager, partner, guardian, or other designation of general responsibility of a business entity.

(14) "Gift" means any gratuitous transfer to a public officer or any member of the family of the public officer or a loan of property or services which is not a contribution as defined in paragraph (7) of this Code section and which is more than $100.00.

(15) "Independent committee" means any committee, club, association, partnership, corporation, labor union, or other group of persons, other than a campaign committee, political party, or political action committee, which receives donations during a calendar year from persons who are members or supporters of the committee and which expends such funds either for the purpose of affecting the outcome of an election for any elected office or to advocate the election or defeat of any particular candidate.

(16) "Intangible property" means property which is not real property and which is held for profit and includes stocks, bonds, interest in partnerships, choses in action, and other investments but shall not include any ownership interest in any public or private retirement or pension fund, account, or system and shall not include any ownership interest in any public or private life insurance contract or any benefit, value, or proceeds of such life insurance contract.

(16.1) "Investment" means the investment of money or capital to gain interest or income.

(16.2) "Loan" means a thing that is borrowed, especially a sum of money that is expected to be paid back with interest to the lender.

(17) "Member of the family" means a spouse and all dependent children.

(17.1) "Nonelection year" shall be construed and applied separately for each elective office and means for each elective office any calendar year during which there is no regular or special election to fill such office.

(17.2) "Nonprofit organization" means a corporation, foundation, or other legal entity, no part of the net earnings of which inures to the benefit of any private shareholder or individual holding an interest in such entity.

(18) "Ordinary and necessary expenses" shall include, but shall not be limited to, expenditures made during the reporting period for qualifying fees, office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41, contributions to nonprofit organizations, flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, attorney fees connected to and in the furtherance of the campaign, and all other expenditures contemplated in Code Section 21-5-33.

(19) "Person" means an individual, partnership, committee, association, corporation, limited liability company, limited liability partnership, trust, professional corporation, or other business entity recognized in the State of Georgia, labor organization, or any other organization or group of persons.

(20) "Political action committee" means:

(A) Any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations during a calendar year from persons who are members or supporters of the committee and which contributes funds to one or more candidates for public office or campaign committees of candidates for public office; and

(B) A "separate segregated fund" as defined in Code Section 21-5-40.

Such term does not include a candidate campaign committee.

(21) "Public employee" means every person employed by the executive, legislative, or judicial branch of state government, or any department, board, bureau, agency, commission, or authority thereof.

(22) "Public officer" means:

(A) The Governor, Lieutenant Governor, Secretary of State, Attorney General, Commissioner of Labor, Commissioner of Agriculture, Commissioner of Insurance, and State School Superintendent;

(B) Every other elected state official not listed in subparagraph (A) of this paragraph;

(C) The executive head of every state department or agency, whether elected or appointed;

(D) Each member of the General Assembly;

(E) The executive director of each state board, commission, council, or authority and the members thereof;

(F) Every elected county official and every elected member of a local board of education; and

(G) Every elected municipal official.

(23) "Qualifying officer" means a person who qualifies a candidate for an election.

(24) "Reporting period" means the period of time beginning the day after the last report due date, excluding any grace period, through the due date of the next report.

(25) "Staff attorney" means a licensed member of the Georgia Bar Association that is employed by the State Ethics Commission.

History.

Code 1981, § 21-5-3, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 2; Ga. L. 1987, p. 458, § 1; Ga. L. 1990, p. 922, § 1; Ga. L. 1992, p. 1075, § 2; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 1279, § 14; Ga. L. 2000, p. 1491, §§ 1, 2; Ga. L. 2005, p. 859, § 2/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 1173, § 2/SB 17; Ga. L. 2013, p. 173, § 2/HB 143; Ga. L. 2022, p. 3, § 3/SB 120; Ga. L. 2023, p. 608, § 1/HB 572, effective July 1, 2023.

The 2022 amendment, effective March 2, 2022, added paragraph (16.2); rewrote subparagraph (22)(A), which read: "Every constitutional officer"; rewrote subparagraph (22)(B), which read: "Every elected state official"; and added paragraph (25).

The 2023 amendment, effective July 1, 2023, substituted "State Ethics Commission" for "Georgia Government Transparency and Campaign Finance Commission" in paragraphs (5) and (25).

Editor's notes.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by the General Assembly, provides that for purposes of issuing rules and regulations, that Act became effective May 1, 2000.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Administrative rules and regulations.

Disclosure reports, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-3.

Law reviews.

For note on 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under the former chapter are included in the annotations for this Code section.

Officers may not receive valuables in exchange for act related to office. — Other than those emoluments of public office that are expressly authorized and established by law, no holder of public office is entitled to request or receive — from any source, directly or indirectly — anything of value in exchange for the performance of any act related to the functions of that office. State v. Agan, 259 Ga. 541, 384 S.E.2d 863, 1989 Ga. LEXIS 542 (1989), cert. denied, 494 U.S. 1057, 110 S. Ct. 1526, 108 L. Ed. 2d 765, 1990 U.S. LEXIS 1549 (1990).

Contributions

Change in act definition enlarged definition of contribution. — The Ethics in Government Act, O.C.G.A. § 21-5-1 et seq., carried forward the substance of the definition of contribution from the Financial Disclosure Act, O.C.G.A. § 21-5-50 et seq., but removed the words that restricted the term "influence" to influencing the introduction of enriching legislation; that change was not as an attempt to restrict the definition of a bribe, but as a manner of enlarging the definition of a contribution so as to insure the reporting of almost all transfers to the candidate or office holder. State v. Agan, 259 Ga. 541, 384 S.E.2d 863, 1989 Ga. LEXIS 542 (1989), cert. denied, 494 U.S. 1057, 110 S. Ct. 1526, 108 L. Ed. 2d 765, 1990 U.S. LEXIS 1549 (1990).

Contributions includes funds received and funds expended. — For a candidate, "contribution" includes not only the transfer of personal funds to the candidate's campaign committee for its expenditure on behalf of the candidate's campaign, but also the candidate's expenditure of these funds toward the same end. Kaler v. Common Cause, 244 Ga. 838, 262 S.E.2d 132, 1979 Ga. LEXIS 1435 (1979) (decided under the former chapter).

For a noncandidate, "contribution" includes not only the transfer of personal and nonpersonal funds to the candidate or the candidate's campaign committee for expenditure by them on behalf of the candidate's campaign, but also the noncandidate's expenditure of these funds toward the same end. Kaler v. Common Cause, 244 Ga. 838, 262 S.E.2d 132, 1979 Ga. LEXIS 1435 (1979) (decided under the former chapter).

Transfer may come within definition of "contribution". — A transfer that is a bribe as defined in O.C.G.A. § 16-10-2 also may come within the definition of "contribution" as contained in the third sentence of paragraph (6) of O.C.G.A. § 21-5-3; the fact that such a transfer must be reported does not change its character as a bribe. State v. Agan, 259 Ga. 541, 384 S.E.2d 863, 1989 Ga. LEXIS 542 (1989), cert. denied, 494 U.S. 1057, 110 S. Ct. 1526, 108 L. Ed. 2d 765, 1990 U.S. LEXIS 1549 (1990).

Purchase of media publicity for a candidate is a "contribution". Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68, 1974 Ga. LEXIS 987 (1974) (decided under the former chapter).

Person

"Person" definition not too vague to be enforced. — The terms used in defining "person", when given a reasonable

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meaning and when the provisions wherein they appear are given a reasonable construction, are not too vague to be enforced. Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68, 1974 Ga. LEXIS 987 (1974) (decided under the former chapter).

OPINIONS OF THE ATTORNEY GENERAL

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under the former chapter are included in the annotations for this Code section.

Campaign Committee

Political action committee is not a campaign committee. — A political action committee does not constitute a campaign committee, as contemplated under O.C.G.A. § 21-5-3, because it neither accepts contributions nor makes expenditures designated to bring about the nomination or election of an individual to any elected office. 1987 Op. Att'y Gen. No. 87-18. (But see 1989 Op. Att'y Gen. No. 89-54).

Contributions

When a candidate transfers personal funds to a campaign committee, it is a "contribution" and it should be reported. 1979 Op. Att'y Gen. No. 79-24 (decided under the former chapter).

Persons who cosign notes as sureties on loans to candidates for their campaigns are "contributors", and the amount of the loan must be included in the campaign financing disclosure report if it exceeds $101.00. 1974 Op. Att'y Gen. No. 74-102 (decided under the former chapter).

Social function sponsored by a political action committee may constitute a reportable contribution and/or a reportable expenditure under O.C.G.A. T. 21, Ch. 5, depending upon the purpose of the social function sponsored by the political action committee. 1989 Op. Att'y Gen. No. 89-47.

"Value" of attendance of an elected official at an event sponsored by a public or private entity is not required to be reported where the purpose of the appearance is not designed to bring about the nomination or election of the official. 1997 Op. Att'y Gen. No. U97-1.

Officers required to file disclosure reports. — Executive directors and members of state examining boards, as well as other public officers defined in O.C.G.A. § 21-5-3(15), must file financial disclosure reports required under the Financial Disclosure Act, O.C.G.A. T. 21, Ch. 5. 1997 Op. Att'y Gen. No. 97-18.

Monetary contributions. — A candidate for public office may receive monetary campaign contributions for an election, and throughout each of the applicable elections for that particular public office's cycle, whichever elections actually occur and for which the candidate is actually on the ballot. An individual may only contribute up to the maximum contribution limit to that candidate for that particular election. 2020 Op. Att'y Gen. 20-3.

Person

Organization collecting money from candidates to spend on political activities. — An organization that would collect money from candidates, which it would then spend on political activities on behalf of candidates, regardless of its precise legal structure, would be a "person". 1979 Op. Att'y Gen. No. U79-18 (decided under the former chapter).

21-5-4. State Ethics Commission; membership; officers; quorum; meetings.

(a) The State Ethics Commission shall be a successor to the Georgia Government Transparency and Campaign Finance Commission, with such duties and powers as are set forth in this chapter. As the successor commission, it shall have all the powers and duties granted to the Georgia Government Transparency and Campaign Finance Commission in all matters pending before the Georgia Government Transparency and Campaign Finance Commission and may continue to investigate, prosecute, and act upon all such matters.

(b) The commission shall be governed by five members appointed as follows: three members, not more than two of whom shall be from the same political party, shall be appointed by the Governor, two for terms of three years and one for a term of two years; one member shall be appointed by the Senate Committee on Assignments for a term of four years; and one member shall be appointed by the Speaker of the House of Representatives for a term of four years. Upon the expiration of a member's term of office, a new member, appointed in the same manner as the member whose term of office expired as provided in this subsection, shall become a member of the commission and shall serve for a term of four years and until such member's successor is duly appointed and qualified. If a vacancy occurs in the membership of the commission, a new member shall be appointed to the unexpired term of office by the state official or the committee that appointed the vacating member. Members of the commission shall not serve for more than one complete term of office.

(c) All members of the commission shall be residents of this state.

(d) Any person who:

(1) Has qualified to run for any federal, state, or local public office within a period of five years prior to such person's appointment;

(2) Has held any federal, state, or local public office within a period of five years prior to such person's appointment; or

(3) Serves as an officer of any political party, whether such office is elective or appointive and whether such office exists on a local, state, or national level

shall be ineligible to serve as a member of the commission.

(e) The commission shall elect a chairperson, a vice chairperson, and other officers as it deems necessary. The members shall not be compensated for their services but they shall be reimbursed in an amount equal to the per diem received by the General Assembly for each day or portion thereof spent in serving as members of the commission. They

shall be paid their necessary traveling expenses while engaged in the business of the commission.

(f) A majority of the members of the commission constitutes a quorum for the transaction of business. The vote of at least a majority of the members present at any meeting at which a quorum is present is necessary for any action to be taken by the commission. No vacancy in the membership of the commission impairs the right of a quorum to exercise all rights and perform all duties of the commission.

(g) Meetings of the members of the commission shall be held at the call of the chairperson or whenever any two members so request.

History.

Code 1981, § 21-5-4, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 3; Ga. L. 2005, p. 859, § 3/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 1173, § 3/SB 17; Ga. L. 2023, p. 608, § 2/HB 572, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, in subsection (a), substituted "State Ethics Commission" for "Georgia Government Transparency and Campaign Finance Commission" at the beginning and substituted "Georgia Government Transparency and Campaign Finance Commission" for "State Ethics Commission" in three places.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-1.

Law reviews.

For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under the former chapter are included in the annotations for this Code section.

Appointment of member by legislature not unconstitutional. — The mere appointment, by a member of the legislative branch, of a nonlegislator to an executive commission, such as the State Campaign and Financial Disclosure Committee (now State Ethics Commission), is not a simultaneous discharge of duties and functions against which the constitutional doctrine of separation of powers is directed. Caldwell v. Bateman, 252 Ga. 144, 312 S.E.2d 320, 1984 Ga. LEXIS 640 (1984) (decided under the former chapter).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under the former chapter are included in the annotations for this Code section.

Reimbursement for food and lodg-

ing expenses. — Members of the commission are not entitled to reimbursement for food and lodging expenses, but only for traveling expenses, i.e., the actual cost of transportation, depending on the type of carrier utilized, while engaged in the business of the commission. 1975 Op. Att'y Gen. No. 75-103 (decided under the former chapter).

Terms. — Members of the Georgia Government Transparency and Campaign Finance Commission may serve no more than one complete four year term of office, as set by law, and may for a period of less than a complete term hold over in office until one's successor is duly appointed and properly takes office. 2011 Op. Att'y Gen. No. 11-4.

21-5-5. Operating expenses.

The funds necessary to carry out this chapter shall come from the funds appropriated to and available to the commission and from any other available funds. The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the commission shall be assigned for administrative purposes only to the State Accounting Office.

History.

Code 1981, § 21-5-5, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 2005, p. 859, § 4/HB 48; Ga. L. 2010, p. 1173, § 4/SB 17; Ga. L. 2022, p. 3, § 4/SB 120.

The 2022 amendment, effective March 2, 2022, substituted "State Accounting Office" for "Secretary of State" at the end of the second sentence in this Code section.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

21-5-6. Powers and duties of the commission.

(a) The commission is vested with the following powers:

(1) To meet at such times and places as it may deem necessary;

(2) To contract with other agencies, public or private, or persons as it deems necessary for the rendering and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities;

(3) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(4) To employ an executive secretary and such additional staff as the commission deems necessary to carry out the powers delegated to the commission by this chapter;

(5) To issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence;

(6) To institute and prosecute actions in the superior courts, in its own name, seeking to enjoin or restrain any violation or threatened violation of this chapter;

(7) Except as provided for in subsection (c) of Code Section 21-5-33, to adopt in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," any rules and regulations necessary and appropriate for carrying out the purposes of this chapter; provided, however, that the commission shall not require the reporting or disclosure of more information on any campaign contribution disclosure report or personal financial disclosure statement than is expressly required to be reported or disclosed by this chapter; and

(8) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the powers specifically authorized to it in this chapter.

(b) The commission shall have the following duties:

(1) To prescribe forms to be used in complying with this chapter;

(2) To prepare and publish in print or electronically a manual setting forth recommended uniform methods of accounting and reporting for use by persons required by this chapter to file statements and reports;

(3) To accept and file any information voluntarily supplied that exceeds the requirements of this chapter;

(4) To develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(5) To adopt a retention standard for records of the commission in accordance with Article 5 of Chapter 18 of Title 50, the "Georgia Records Act";

(6) To prepare and publish in print or electronically such other reports and technical studies as in its judgment will tend to promote the purposes of this chapter;

(7) To provide for public dissemination of such summaries and reports;

(8) To determine whether the required statements and reports have been filed and, if so, whether they conform to the requirements of this chapter;

(9) To make investigations, subject to the limitations contained in Code Section 21-5-7.1, with respect to the statements and reports

filed under this chapter and with respect to alleged failure to file any statements or reports required under this chapter and upon receipt of the written complaint of any person, including a staff attorney employed by the commission, verified under oath to the best information, knowledge, and belief by the person or staff attorney making such complaint with respect to an alleged violation of any provision of this chapter, provided that nothing in this Code section shall be construed to limit or encumber the right of the commission to initiate on probable cause an investigation on its own cognizance as it deems necessary to fulfill its obligations under this chapter;

(10)(A) To conduct a preliminary investigation, subject to the limitations contained in Code Section 21-5-7.1, of the merits of a written complaint by any person, including a staff attorney employed by the commission, who believes that a violation of this chapter has occurred, verified under oath to the best information, knowledge, and belief by the person or staff attorney making such complaint. If there are found no reasonable grounds to believe that a violation has occurred, the complaint shall be dismissed, subject to being reopened upon discovery of additional evidence or relevant material. If the commission determines that there are such reasonable grounds to believe that a violation has occurred, it shall give notice by summoning the persons believed to have committed the violation to a hearing. The hearing shall be conducted in all respects in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commission may file, through a staff attorney employed by the commission, a complaint charging violations of this chapter, and any person aggrieved by the final decision of the commission is entitled to judicial review in accordance with Chapter 13 of Title 50; provided, however, that nothing in this Code section shall be construed to limit or encumber the right of the commission to initiate on probable cause an investigation on its own cognizance as it deems necessary to fulfill its obligations under this chapter.

(B) In any such preliminary investigation referenced in subparagraph (A) of this paragraph, until such time as the commission determines that there are reasonable grounds to believe that a violation has occurred, it shall not be necessary to give the notice by summons nor to conduct a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(11) To report suspected violations of law to the appropriate law enforcement authority;

(12) To investigate upon a written complaint any illegal use of public employees in a political campaign by any candidate;

(13) To issue, upon written request, and publish in print or electronically written advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances; and each such written advisory opinion shall be issued within 60 days of the written request for the advisory opinion. The commission shall make all advisory opinions that were issued after January 9, 2006, publicly available for review and shall post these and all future opinions on the commission's website, and the commission shall make all advisory opinions that were issued prior to January 9, 2006, publicly available for review and shall post these opinions on the commission's website. No liability shall be imposed under this chapter for any act or omission made in conformity with a written advisory opinion issued by the commission that is valid at the time of the act or omission;

(14) To issue orders, after the completion of appropriate proceedings, directing compliance with this chapter or prohibiting the actual or threatened commission of any conduct constituting a violation. Such order may include a provision requiring the violator:

(A) To cease and desist from committing further violations;

(B) To make public complete statements, in corrected form, containing the information required by this chapter;

(C)(i) Except as provided in paragraph (2) of Code Section 21-5-7.1, to pay a civil penalty not to exceed $1,000.00 for each violation contained in any report required by this chapter or for each failure to comply with any other provision of this chapter or of any rule or regulation promulgated under this chapter; provided, however, that a civil penalty not to exceed $10,000.00 may be imposed for a second occurrence of a violation of the same provision and a civil penalty not to exceed $25,000.00 may be imposed for each third or subsequent occurrence of a violation of the same provision. In imposing a penalty or late filing fee under this chapter, the commission may waive or suspend such penalty or fee if the imposition of such penalty or fee would impose an undue hardship on the person required to pay such penalty or fee. The commission may also waive or suspend a penalty or fee in the case of failure to file or late filing of a report if there are no items to be included in the report. For the purposes of the penalties imposed by this division, the same error, act, omission, or inaccurate entry shall be considered a single violation if the error, act, omission, or inaccurate entry appears multiple times on the same report or causes further errors, omissions, or inaccurate entries in that report or in any future reports or further violations in that report or in any future reports.

(ii) A civil penalty shall not be assessed except after notice and

hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The amount of any civil penalty finally assessed shall be recoverable by a civil action brought in the name of the commission. All moneys recovered pursuant to this Code section shall be deposited in the state treasury.

(iii) The Attorney General of this state shall, upon complaint by the commission, or may, upon the Attorney General's own initiative if after examination of the complaint and evidence the Attorney General believes a violation has occurred, bring an action in the superior court in the name of the commission for a temporary restraining order or other injunctive relief or for civil penalties for a violation of any provision of this chapter or any rule or regulation duly issued by the commission.

(iv) Any action brought by the Attorney General to enforce civil penalties for a violation of the provisions of this chapter or of any rule or regulation duly issued by the commission or any order issued by the commission ordering compliance or to cease and desist from further violations shall be brought in the superior court of the county of the residence of the party against whom relief is sought. Service of process shall lie in any jurisdiction within the state. In such actions, the superior court inquiry shall be limited to whether notice was given by the commission to the violator in compliance with the Constitution and the rules of procedure of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Upon satisfaction that notice was given and a hearing was held pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the superior court shall enforce the orders of the commission and the civil penalties assessed under this chapter and the superior court shall not make independent inquiry as to whether the violations have occurred.

(v) In any action brought by the Attorney General to enforce any of the provisions of this chapter or of any rule or regulation issued by the commission, the judgment, if in favor of the commission, shall provide that the defendant pay to the commission the costs, including reasonable attorneys' fees, incurred by the commission in the prosecution of such action.

The commission shall make all such orders that were issued after January 9, 2006, publicly available for review and shall post these and all future orders on the commission's website, and the commission shall make all advisory orders that were issued prior to January 9, 2006, publicly available for review and shall post these orders on the commission's website. Such orders shall serve as precedent for all future orders and opinions of the commission;

(15) To make public its conclusion that a violation has occurred and the nature of such violation;

(16) To petition the superior court within the county where the hearing was or is being conducted for the enforcement of any order issued in connection with such hearing;

(17) To report to the General Assembly and the Governor at the close of each fiscal year concerning the action taken during that time, the names, salaries, and duties of all individuals employed, and the funds disbursed and to make such further report on the matters within its jurisdiction as may appear desirable;

(18) To carry out the procedures, duties, and obligations relative to the commission set forth in this chapter;

(19) On a quarterly basis, to prepare, update, and publish in print or electronically a report and post such report on its website, listing the name of each filer required to file with the commission who has not filed the most recent campaign contribution disclosure report required by Code Sections 21-5-34 and 21-5-34.1, the financial disclosure statement required by Code Section 21-5-50, or the disclosure report required by Code Section 21-5-73 within 30 days of the date such report was due to be filed;

(20) To publish in print or electronically overall lobbyist spending by category. Such categories shall include gifts, meals, entertainment, office supplies, lodging, equipment, advertising, travel, and postage;

(21) To promulgate rules and regulations with respect to electronic filings;

(22) To provide and conduct semiannual training on the mechanics of electronic filing and registration;

(23) To award attorneys' fees to the party complained against if the commission deems the complaint to be frivolous, legally or factually; and

(24) To issue a warning letter to persons who have not filed any statement or report required by this chapter.

History.

Code 1981, § 21-5-6, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, §§ 4, 5; Ga. L. 1992, p. 56, § 1; Ga. L. 2005, p. 859, § 5/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2009, p. 620, § 1/SB 168; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 1173, § 5/SB 17; Ga. L. 2011, p. 19, § 1/HB 232; Ga. L. 2011, p. 590, § 1/HB 143; Ga. L. 2013, p. 173, § 1/HB 143; Ga. L. 2013, p. 540, § 1/HB 142; Ga. L. 2022, p. 3, § 5/SB 120.

The 2022 amendment, effective March 2, 2022, in paragraph (a)(7), substituted "Except as provided for in subsection (c) of Code Section 21-5-33, to adopt" for "To adopt", substituted "campaign contribution disclosure report or personal fi-

nancial disclosure statement" for "report", and deleted ", unless such information was required to be reported or disclosed by rules and regulations of the commission which were in effect as of January 1, 2013, so long as such rules and regulations do not conflict with this chapter" following "by this chapter"; in paragraph (b)(9), inserted "including a staff attorney employed by the commission," and "or staff attorney"; in subparagraph (b)(10)(A), in the first sentence, inserted ", including a staff attorney employed by the commission," and "or staff attorney", and inserted ", through a staff attorney employed by the commission," in the last sentence; and deleted ", or if the complaining party fails, without good cause, to appear at the preliminary hearing on the complaint" following "factually" in paragraph (23).

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Administrative rules and regulations.

Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-1.

Law reviews.

For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

JUDICIAL DECISIONS

Judicial enforcement of administrative subpoenas. — In a case in which the Georgia Government Transparency and Campaign Finance Commission initiated a preliminary investigation and issued administrative subpoenas to the appellees, the Commission could seek judicial enforcement of the Commission's administrative subpoenas in accordance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., because the subpoenas issued "commanded" and "compelled" the respective appellees to produce various communications and records; and those subpoenas sufficiently "ordered" the respective appellees to produce the requested materials, the alleged noncompliance with which would allow for the Commission to seek enforcement in the superior court. Ga. Gov't Transparency & Campaign Fin. Comm'n v. New Ga. Project Action Fund, 359 Ga. App. 32, 856 S.E.2d 733, 2021 Ga. App. LEXIS 152 (2021).

Commission's finding of reasonable grounds for violation not appealable. — Candidate had not shown irreparable harm justifying immediate appeal to the superior court under O.C.G.A. § 50-13-19(a) from an interim decision of the Georgia Government Transparency and Campaign Finance Commission because judicial review would be available after the final decision; the charges had been pending over eight years and alleged damage to the candidate's reputation was not irreparable harm. Oxendine v. Gov't Transparency & Campaign Fin. Comm'n, 341 Ga. App. 901, 802 S.E.2d 310, 2017 Ga. App. LEXIS 304 (2017), cert. denied, No. S17C1925, 2017 Ga. LEXIS 1018 (Ga. Dec. 11, 2017).

Attorneys' fees. — The superior court erred in failing to award attorneys' fees to

the commission after the commission prevailed in an enforcement action under the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq. State Ethics Comm'n v. Long, 223 Ga. App. 621, 478 S.E.2d 618.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under the former chapter are included in the annotations for this Code section.

Activities constituting "meeting" within meaning of Open Meetings Law. — The activities conducted in accordance with O.C.G.A. § 21-5-6(b)(10)(A), including convening a quorum to hear testimony, taking evidence, considering arguments of the parties, deliberating, and imposing penalties, constitute a "meeting" within the meaning of the Open Meetings Law, O.C.G.A. § 50-14-1 et seq. Accordingly, the commission must conduct all of these activities regarding the resolution of a contested case in accordance with the dictates of the Open Meetings Law. 1989 Op. Att'y Gen. No. 89-6.

Recusal motion. — The commission acting as a body, or through an individual member of the commission, has no express or implied statutory authority to rule on a motion to recuse one of its members; rather, the member against whom the recusal motion is filed must determine, in light of O.C.G.A. § 45-10-3, whether he or she should voluntarily abstain. 1989 Op. Att'y Gen. 89-9.

Commission is not authorized to grant exemptions from reporting and disclosure requirements of chapter. 1977 Op. Att'y Gen. No. 77-85 (decided under the former chapter).

Investigation of possible retrospective violations. — The commission was authorized to investigate possible violations of the former chapter whether or not the questioned acts occurred prior to the commission's existence. 1976 Op. Att'y Gen. No. 76-52 (decided under the former chapter).

Two-year misdemeanor statute of limitations inapplicable to investigations. — Investigative powers of Campaign and Financial Disclosure Commission (now State Ethics Commission) not barred by two-year misdemeanor statute of limitations. 1981 Op. Att'y Gen. No. 81-102 (decided under the former chapter).

Identifying persons not filing timely financial disclosure statements. — While there is no statutory authority to compel local filing officers to report candidates or public officers who have not timely filed their financial disclosure statements, O.C.G.A. T. 21, Ch. 5 requires the Ethics Commission to identify such persons. 1987 Op. Att'y Gen. No. 87-26.

Who may adjust contribution limits. — The Georgia Government Transparency and Campaign Finance Commission, and not its staff, is the regulatory body under Georgia law granted the discretionary ability to determine whether and to what extent to adjust contribution limits. There is no express grant of authority by the General Assembly that would permit the delegation of this discretionary duty to Commission staff. Therefore, only the Commission, not the staff, can alter contribution limits pursuant to the discretionary authority granted to the Commission by statute. 2020 Op. Att'y Gen. 20-3.

21-5-7. Initiation of complaints.

The commission shall not initiate any investigation or inquiry into any matter under its jurisdiction based upon the complaint of any person, including a staff attorney employed by the commission, unless that person or staff attorney shall produce the same in writing and verify the same under oath to the best information, knowledge, and belief of such person, the falsification of which shall be punishable as

false swearing under Code Section 16-10-71. The person against whom any complaint is made shall be furnished by hand delivery or statutory overnight delivery or mailed by certified mail, return receipt requested, a copy of the complaint by the commission within two business days of the commission's receipt of such complaint and prior to any other public dissemination of such complaint.

History.

Code 1981, § 21-5-7, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 6; Ga. L. 2000, p. 1619, § 6; Ga. L. 2005, p. 859, § 6/HB 48; Ga. L. 2022, p. 3, § 6/SB 120.

The 2022 amendment, effective March 2, 2022, in the first sentence, inserted ", including a staff attorney employed by the commission," and "or staff attorney" and deleted the former last sentence, which read: "Nothing in this Code section, however, shall be construed to limit or encumber the right of the commission to initiate on probable cause an investigation on its own cognizance as it deems necessary to fulfill its obligations under this chapter."

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.

For article on 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided under the former chapter are included in the annotations for this Code section.

Unconstitutional to conduct hearing without allowing accused to participate. — Due process is violated where the commission subpoenas witnesses, holds public hearings at which witnesses are interrogated, and ultimately issues a report, but all the while refusing to allow a request by the alleged violator to participate in the public hearings by cross examining witnesses, making objections, and presenting evidence. Caldwell v. Bateman, 252 Ga. 144, 312 S.E.2d 320, 1984 Ga. LEXIS 640 (1984) (decided under former chapter).

21-5-7.1. Technical defects in filings; procedures for determination or correction of defects; failure to correct.

The commission shall adopt rules which shall provide that:

(1) Upon the commission's receipt of a complaint, a determination shall be made as to whether the complaint relates to a technical defect in a filing. For this purpose, a technical defect shall include, but not be limited to, a defect such as an incorrect date or a failure to include a date, an incorrect contributor's occupation or a failure to include a contributor's occupation, an incorrect address or email address or a failure to include an address or email address, an incorrect employer or a failure to include an employer, accounting errors, or any other similar defects;

(2) When the commission determines that a complaint relates to a technical defect in a filing, the subject of the complaint shall be issued

a notice of the technical defect by certified mail, return receipt requested, or statutory overnight delivery and shall be given a period of 30 calendar days from the receipt of the notice to correct the technical defect. During the 30 day period the complaint shall be considered as received by the commission but not yet filed with the commission and shall not be considered a violation of this chapter. If during the 30 day period the technical defect is cured by an amended filing or otherwise, or if during the 30 day period the subject of the complaint demonstrates that there is no technical defect as alleged, the complaint shall be disposed of without filing or further proceedings and no penalty shall be imposed. If the subject of the complaint fails to respond to the notice of a technical defect, make an amended filing, or demonstrate that there is no technical defect as alleged by the thirty-first day, the commission shall impose and collect an administrative fee not to exceed $50.00 per technical defect. For the purposes of the penalties imposed by this paragraph, the same error or inaccurate entry shall be considered a single technical violation if the error or inaccurate entry appears multiple times on a single report or causes further errors or inaccurate entries in that report or in any future reports;

(3) If the subject of the complaint does not pay the administrative fee required by paragraph (2) of this Code section, if any, and does not otherwise also comply with paragraph (2) of this Code section by the sixtieth day from the receipt of the notice of a technical defect, the commission shall conduct further investigation and the complaint may proceed further in accordance with the provisions of this chapter; and

(4) When the commission determines in its discretion that best efforts have been made to complete a required filing, said filing shall be considered in compliance with this Code section and any complaint relative to said filing shall be dismissed.

History.

Code 1981, § 21-5-7.1, enacted by Ga. L. 2005, p. 859, § 7/HB 48; Ga. L. 2010, p. 1173, § 6/SB 17; Ga. L. 2023, p. 730, § 2(8)/HB 475, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" twice in paragraph (1).

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Law reviews.

For article on the 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

21-5-8. Venue.

Venue for prosecution of civil violations of this chapter or for any other action by or on behalf of the commission shall be in the county of the residence of the candidate or public officer at the time of the alleged violation or action.

History.
Code 1981, § 21-5-8, enacted by Ga. L. 1986, p. 957, § 1.

21-5-9. Penalties.

Except as otherwise provided in this chapter, any person who knowingly fails to comply with or who knowingly violates this chapter shall be guilty of a misdemeanor. The provisions of this Code section shall not preclude prosecution and punishment for the commission of any felony offense as otherwise provided by law.

History.
Code 1981, § 21-5-9, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 7; Ga. L. 1988, p. 603, § 8; Ga. L. 1989, p. 10, § 1; Ga. L. 2016, p. 173, § 6/SB 199.

Law reviews.
For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Venue. — When the defendants were indicted under O.C.G.A. § 21-5-9 for failing to file documents with the State Ethics Commission under O.C.G.A. § 21-5-34, venue was in the county where the commission was exclusively located; the place fixed for performance of the required act fixed the situs of the alleged crime. McKinney v. State, 282 Ga. 230, 647 S.E.2d 44, 2007 Ga. LEXIS 479 (2007).

21-5-9.1. Prerequisite to seeking election or reelection to General Assembly.

No person who has served or is serving as a member of the General Assembly shall be eligible to qualify to seek election or reelection to the General Assembly until and unless all fines and fees owing to the commission have been paid, all disclosure reports due have been filed, and all outstanding taxes have been paid.

History.
Code 1981, § 21-5-9.1, enacted by Ga. L. 2022, p. 3, § 6A/SB 120.

Effective date.
This Code section became effective March 2, 2022.

21-5-10. Chapter as continuation of laws; effect of enactment.

The provisions of this chapter, so far as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The repeal by this chapter of any Act of the General Assembly, or part thereof, shall not revive any Act, or part thereof,

heretofore repealed or superseded. This chapter shall not affect any act done, liability or penalty incurred, or right accrued or vested prior to the taking effect of this chapter; nor shall this chapter affect any actions or prosecution then pending, or to be instituted, to enforce any right or penalty then accrued or to punish any offense theretofore committed.

History.
Code 1981, § 21-5-10, enacted by Ga. L. 1987, p. 297, § 8.

21-5-11. Acceptance by public officers of monetary fees or honoraria.

(a) No public officer other than a public officer elected state wide shall accept a monetary fee or honorarium in excess of $100.00 for a speaking engagement, participation in a seminar, discussion panel, or other activity which directly relates to the official duties of that public officer or the office of that public officer.

(b) No public officer elected state wide shall accept any monetary fee or honorarium for a speaking engagement, participation in a seminar, discussion panel, or other such activity.

(c) For purposes of this chapter, actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to permit participation in a panel or speaking engagement at the meeting shall not be monetary fees or honoraria.

History.
Code 1981, § 21-5-11, enacted by Ga. L. 1992, p. 1075, § 3; Ga. L. 2010, p. 1173, § 7/SB 17.

Editor's notes.
Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Law reviews.
For note on the 1992 enactment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

21-5-12. Connected organizations.

(a) The name of each political action committee shall include the name of its connected organization.

(b) The name of any separate segregated fund, as defined in Code Section 21-5-40, shall include the name of its connected organization.

History.
Code 1981, § 21-5-12, enacted by Ga. L. 1994, p. 258, § 1; Ga. L. 2005, p. 859, § 8/HB 48.

Editor's notes.
Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.
For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

21-5-13. Limitation of actions.

(a) Any action alleging a violation of this chapter shall be commenced within three years after the date on which the violation, wrongful action, or omission occurred, unless otherwise provided by subsections (b) or (c) of this Code section.

(b) Any action alleging a violation involving any person elected to serve for a term of four or more years, but fewer than six years, or involving any candidate for an office with a term of four, but fewer than six years, shall be commenced within five years after the date on which the violation, wrongful action, or omission occurred.

(c) Any action alleging a violation of this chapter involving any person elected to serve a term of six or more years or involving any candidate for an office with a term of six or more years shall be commenced within seven years after the date on which the violation, wrongful act, or omission occurred.

(d) For purposes of this Code section, an action shall be deemed to have commenced against a person only when either:

(1) A complaint has been accepted by the commission in compliance with Code Section 21-5-7; or

(2) The commission or Attorney General serves on such person a notice of summons or hearing, in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that alleges that such person has violated this chapter.

History.
Code 1981, § 21-5-13, enacted by Ga. L. 2005, p. 859, § 9/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 1173, § 8/SB 17; Ga. L. 2022, p. 3, § 7/SB 120.

The 2022 amendment, effective March 2, 2022, rewrote this Code section, which formerly read: "Any action alleging a violation of this chapter shall be commenced within three years after the date of filing of the first report containing the alleged violation; provided, however, that any action alleging a violation of this chapter shall be commenced within five years after the date of filing of the first report containing the alleged violation involving any person elected to serve for a term of four or more years or any candidate for an office with a term of four or more years. For purposes of this Code section, an action shall be deemed to have commenced against a person only when either:

"(1) A complaint has been accepted by the commission in compliance with Code Section 21-5-7; or

"(2) The commission or Attorney General serves on such person a notice of summons or hearing, in accordance with Chapter 13 of Title 50, the 'Georgia Ad-

ministrative Procedure Act,' that alleges that such person has violated this chapter."

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Law reviews.

For article on the 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

21-5-14. Email address reporting requirements; exceptions.

(a) Except as provided in subsection (b) of this Code section, each individual required by this chapter to file a report or disclosure statement with the commission shall provide the commission, in writing, with a current email address and shall advise the commission, in writing, of any change to such address within ten days of any change to such address. Such information shall be provided to the commission prior to January 31 each year.

(b) City, county, and school board officials are not required to provide an email address to the commission.

History.

Code 1981, § 21-5-14, enacted by Ga. L. 2010, p. 1173, § 9/SB 17; Ga. L. 2011, p. 19, § 2/HB 232; Ga. L. 2023, p. 730, § 2(9)/HB 475, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in the first sentence of subsection (a) and in subsection (b).

Editor's notes.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.' "

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

21-5-15. Notice to local officials regarding certain actions to be given by certified mail or statutory overnight delivery.

When the commission gives notice to a local official referred to in subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3 of any of the actions listed in this Code section, such notice shall be given by certified mail or statutory overnight delivery. This Code section shall apply with respect to any notice of: the filing of a complaint; a technical

defect in a filing; a failure to make a timely filing; or a late fee or other penalty.

History.

Code 1981, § 21-5-15, enacted by Ga. L. 2011, p. 19, § 3/HB 232.

Editor's notes.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

ARTICLE 2

CAMPAIGN CONTRIBUTIONS

Administrative rules and regulations.

Disclosure reports, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-3.

Committees, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-4.

Disposition of contributions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-5.

Campaign contributions, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-6.

Law reviews.

For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under the former chapter are included in the annotations to this article.

Candidates for county education board. — The members of a county board of education are county officers and candidates for these offices were subject to the requirements of the former chapter. 1975 Op. Att'y Gen. No. 75-129 (decided under former chapter).

Chapter not applicable to legislator's attempt to be elected House speaker pro tem. — The former chapter did not mention and therefore does not apply to contributions and expenditures made in connection with a legislator's attempt to be elected speaker pro tem of the Georgia House of Representatives. 1976 Op. Att'y Gen. No. 76-100 (decided under former chapter).

Corporate contribution to campaign of incumbent state candidate. — Nothing in any provision of the former chapter prohibited a corporate contribution to the election or reelection campaign of an incumbent candidate for state office. 1975 Op. Att'y Gen. No. 75-143 (decided under former chapter).

Administration costs of employee participation plan. — The payment by a corporation of the cost of the administration of an employee participation plan established pursuant to 11 C.F.R. § 114.11, which is a political giving program, was not subject to the disclosure provisions of the former Campaign and Financial Disclosure Act. 1984 Op. Att'y Gen. No. 84-11 (decided under former chapter).

Candidate should keep records for a minimum period of four years. — Prudence would seem to dictate that the candidate who in good faith is attempting to comply with all aspects of the former chapter should keep the candidate's records as evidence for a minimum period of four years from the date of the last contribution or expenditure made in connection with the campaign. 1976 Op. Att'y Gen.

No. 76-108 (decided under former chapter).

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statutes respecting political contributions or other political activities by labor organizations, 167 A.L.R. 1465.

Power of corporation to make political contribution or expenditure under state law, 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals, 94 A.L.R.3d 944.

Constitutional validity of state or local regulation of contributions by or to political action committees. 24 A.L.R.6th 179.

21-5-30. Contributions made to candidate or campaign committee or for recall of a public officer.

(a) Except as provided in subsection (e) of Code Section 21-5-34, no contributions to bring about the nomination or election of a candidate for any office shall be made or accepted except directly to or by a candidate or such candidate's campaign committee which is organized for the purpose of bringing about the nomination or election of any such candidate; and no contributions to bring about the recall of a public officer or to oppose the recall of a public officer or to bring about the approval or rejection by the voters of a proposed constitutional amendment, state-wide referendum, or proposed question at the state, municipal, or county level shall be made or accepted except directly to or by a campaign committee organized for that purpose.

(b) Each candidate shall maintain records and file reports as required by this chapter or shall have a campaign committee for the purposes of maintaining records and filing reports as required by this chapter. Every campaign committee shall have a chairperson and a treasurer, except that the candidate may serve as the chairperson and treasurer. Before a campaign committee accepts contributions, the name and address of the chairperson and treasurer shall be filed with the commission. When a candidate has been elected to public office, the registration of that candidate's campaign committee with the commission shall remain in effect so long as the candidate remains in office until and unless the registration is canceled by the campaign committee or the candidate. The same person may serve as chairperson and treasurer. No contributions shall be accepted by or on behalf of the campaign committee at a time when there is a vacancy in the office of chairperson or treasurer of the campaign committee.

(c) Contributions of money received pursuant to subsection (a) of this Code section shall be deposited in a campaign depository account opened and maintained by the candidate or the campaign committee. The account may be an interest-bearing account; provided, however,

that any interest earned on such account shall be reported and may only be used for the purposes allowed for contributions under this chapter. Those who elect the separate accounting option as provided in Code Section 21-5-43 may also open, but are not required to open, a separate campaign depository account for each election for which contributions are accepted and allocated beyond their next upcoming election.

(d) Unless otherwise reported individually, where separate contributions of less than $100.00 are knowingly received from a common source, such contributions shall be aggregated for reporting purposes. For purposes of fulfilling such aggregation requirement, members of the family, members of the same firm or partnership, or employees of the same person, as defined in paragraph (19) of Code Section 21-5-3, shall be considered to be a common source; provided, however, that the purchase of tickets for not more than $25.00 each and for or attendance at a fundraising event by members of the family, members of the same firm or partnership, or employees of the same person shall not be considered to be contributions from a common source except to the extent that tickets are purchased as a block.

(e) The making and acceptance of anonymous contributions are prohibited. Any anonymous contributions received by a candidate or campaign committee shall be transmitted to the state treasurer for deposit in the state treasury, and the fact of such contribution and transmittal shall be reported to the commission.

(f)(1) For purposes of this subsection, the term:

(A) "Public utility corporation regulated by the Public Service Commission" includes, but is not limited to, an electric membership corporation.

(B) "Electric membership corporation" means a public utility corporation regulated by the Public Service Commission operating as an electric membership corporation under the provisions of Article 4 of Chapter 3 of Title 46.

(2) Except as limited by Code Section 21-5-30.1 or this subsection, a public utility corporation regulated by the Public Service Commission shall be allowed to make contributions to political campaigns. Any contributions made by a public utility corporation regulated by the Public Service Commission to a political campaign shall not be included as recoverable costs in any rate-making or rate-setting proceedings before the Public Service Commission. Notwithstanding the provisions of this Code section or any other provision of law to the contrary, no electric membership corporation and no nonprofit corporation, group, or association, the membership of which consists of electric membership corporations, shall be authorized to make any

contribution to a political campaign. Notwithstanding the foregoing, nothing in this Code section shall be construed to prohibit a nonprofit corporation, group, or association, the membership of which consists of electric membership corporations, from establishing, administering, and soliciting contributions for a political action committee from officers, directors, employees, agents, contractors, and members of such entities so long as such actions and contributions do not otherwise violate the provisions of this chapter.

(g) Neither a candidate who is not a public officer nor his or her campaign committee may lawfully accept a campaign contribution until the candidate has filed with the commission a declaration of intention to accept campaign contributions which shall include the name and address of the candidate and the names and addresses of his or her campaign committee officers, if any; provided, however, that a candidate, as defined in subparagraphs (F) and (G) of paragraph (22) of Code Section 21-5-3, shall make filings of the same kind and in the same manner as provided in this subsection for other public officers except that filings under this subsection shall be made with the election superintendent of the county in the case of public officers as defined in subparagraph (F) of paragraph (22) of Code Section 21-5-3 and shall be made with the municipal clerk in the municipality of election or, if there is no clerk, with the chief executive officer of the municipality in the case of public officers as defined in subparagraph (G) of paragraph (22) of Code Section 21-5-3. The election superintendent, municipal clerk, or chief executive officer, as applicable, shall transmit electronically by eFiling or eFax a copy of each such declaration of intention to the commission not later than ten days after the close of the reporting period.

History.

Code 1981, § 21-5-30, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 9; Ga. L. 1987, p. 458, § 2; Ga. L. 1988, p. 603, § 1; Ga. L. 1990, p. 922, § 2; Ga. L. 1992, p. 1075, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 258, §§ 2, 3; Ga. L. 1996, p. 1092, § 1; Ga. L. 2005, p. 859, § 10/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2010, p. 1173, § 10/SB 17; Ga. L. 2011, p. 569, § 1/SB 160; Ga. L. 2014, p. 9, § 1/SB 297.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Law reviews.

For article, "Georgia Campaign Finance and Disclosure Law," see 27 Ga. St. B. J. 175 (1991).

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided under Ga. L. 1974, p. 155 and the former chapter are included in the annotations for this Code section.

Subsection (e) is not unconstitutional, as it does not take private property without compensation. An anonymous contribution never becomes the property of the candidate or the candidate's committee. Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68, 1974 Ga. LEXIS 987 (1974) (decided under provisions of Ga. L. 1974, p. 155 similar to subsection (e) of this Code section).

Liability for failure to report "common source" contributions. — Candidate charged with failure to report certain "common source" contributions, as defined by O.C.G.A. § 21-5-30, could not be penalized for such failure, even though the candidate knew the contributions were from a common source, where it was the candidate's campaign treasurer who was unaware of the common source of the contributions and who filed the campaign report as authorized by O.C.G.A. § 21-5-34(a)(3). State Ethics Comm'r v. Moore, 214 Ga. App. 236, 447 S.E.2d 687, 1994 Ga. App. LEXIS 847 (1994), cert. denied, No. S94C1821, 1994 Ga. LEXIS 1180 (Ga. Dec. 2, 1994).

Attorney improperly held in contempt following delivery of anonymous campaign contribution. — Attorney who delivered an anonymous campaign contribution on behalf of a client was improperly held in contempt for failing to disclose the client's name to the State Ethics Commission; the attorney invoked the self-incrimination privilege, and the trial court found the attorney in contempt without first determining whether the Commission's proposed questions might have been incriminating. Begner v. State Ethics Comm'n, 250 Ga. App. 327, 552 S.E.2d 431, 2001 Ga. App. LEXIS 754 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Public Utility Corporations

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under the former chapter and former Code Section 21-5-10 are included in the annotations for this Code section.

Effect of federal legislation. — The prohibition against for-hire motor carriers regulated by the Public Service Commission from contributing to a political campaign is still applicable despite the partial preemption provisions contained in the Federal Aviation Administration Act of 1994, Pub. L. No. 103-305, § 601. 1996 Op. Att'y Gen. No. 96-1.

Registration at time committee is formed. — Campaign committees must register with the Secretary of State at the time the committee is formed, regardless of the amount of money to be raised or expended. 1985 Op. Att'y Gen. No. 85-51 (decided under the former chapter).

Dollar amount of state bank contributions not disclosed to state commission. — Assuming campaign contributions are made by state banks, there is no dollar amount that must be disclosed to the State Campaign and Financial Disclosure Commission (now the State Ethics Commission). 1976 Op. Att'y Gen. No. 76-109 (decided under the former chapter).

Private carriers are not included within the purview of the Public Service Commission's general supervision, and are not subject to the prohibition against political contributions set forth in O.C.G.A. § 21-5-30(f). 1990 Op. Att'y Gen. No. 90-32.

Public Utility Corporations

Constitutionality. — Ga. L. 1974, pp. 155-62, as amended by Ga. L. 1975, pp. 1120, 1127 does not unconstitutionally infringe guarantees of freedom of speech and association. 1982 Op. Att'y Gen. No. 82-56 (decided under Ga. L. 1974, pp. 155-62 as amended by Ga. L. 1975, pp. 1120, 1127).

Ga. L. 1974, pp. 155-62, as amended by Ga. L. 1975, pp. 1120, 1127 does not unconstitutionally deny equal protection to common carriers. 1982 Op. Att'y Gen. No. 82-56 (decided under Ga. L. 1974, pp. 155-62 as amended by Ga. L. 1975, pp. 1120, 1127).

The differential treatment between regulated and nonregulated corporations imposed by Ga. L. 1974, pp. 155-62, as amended by Ga. L. 1975, pp. 1120-1127 can be justified on the ground that in granting and protecting the monopolies of public utilities, the state has the duty also to see that the power so granted is not abused and does not even appear to have a corrupting influence on the political process. 1982 Op. Att'y Gen. No. 82-56 (decided under Ga. L. 1974, pp. 155-62 as amended by Ga. L. 1975, pp. 1120, 1127).

"Public utility" and "regulated" defined. — "Public utility" is a business organization which regularly supplies the public with some commodity or service; "regulated" is defined in former Code 1933, § 93-307 (see now O.C.G.A. § 46-2-20). 1976 Op. Att'y Gen. No. 76-53.

"Public utility corporation regulated by the Public Service Commission." — An electric membership corporation falls within the definition of a "public utility corporation, regulated by the Public Service Commission." 1985 Op. Att'y Gen. No. U85-35.

"Common carrier of persons or property" is a "public utility". 1982 Op. Att'y Gen. No. 82-56 (decided under Ga. L. 1974, pp. 155-62 as amended by Ga. L. 1975, pp. 1120, 1127).

Public utility may not provide logistical assistance. — Public utility corporations regulated by the Public Service Commission are prohibited under the Campaign and Financial Disclosure Act, O.C.G.A. T. 21, Ch. 5, from rendering logistical assistance, including utility-compensated employee services of any kind, to a political campaign. 1983 Op. Att'y Gen. No. 83-1.

Ga. L. 1974, pp. 155-62 as amended by Ga. L. 1975, pp. 1120, 1127 is a strict prohibition of any person acting on behalf of a regulated utility from making any contribution to any political campaign. 1982 Op. Att'y Gen. No. 82-56 (decided under Ga. L. 1974, pp. 155-62 as amended by Ga. L. 1975, pp. 1120, 1127).

Public utility employee may not provide services to campaign on utility time. — The value of any services performed by employees of a regulated public utility corporation on behalf of a campaign would constitute prohibited contributions, if those employees are performing such services on company time, while they are on duty, drawing or eligible for their salary or hourly pay. This would include a situation in which a regulated public utility employee collects personal contributions from other employees and forwards those contributions to a political campaign, if this activity is being done on company time. It would also apply to secretarial or any other services performed toward this end. 1983 Op. Att'y Gen. No. 83-1.

Attorneys who represent regulated public utilities are prohibited from making contributions to political campaigns on behalf of the regulated public utility, but are not prohibited from contributing to political campaigns in their personal capacity. 1986 Op. Att'y Gen. No. U86-34.

Contributions by political action committee funded by employees of utility. — Former § 21-5-10 did not prohibit political action committees, formed and operated pursuant to the Federal Election Campaign Act of 1971, as amended, and funded by voluntary personal contributions from employees and persons affiliated with public utility corporations regulated by the Public Service Commission, which do not receive any assistance whatsoever from the regulated public utility corporation, from making political contributions to state and local political campaigns in Georgia; however, each situation must be determined on its own factual basis. 1986 Op. Att'y Gen. No. 86-2.

Regulated utility not prohibited from publicizing views on tax referendum. — Former Code 1933, § 40-3808.2 does not prohibit a public utility regulated by the Public Service Commission from contributing to efforts to publicize views with respect to a referendum on the imposition of a county sales tax. 1979 Op. Att'y Gen. No. 79-54 (decided under former Code 1933, § 40-3808.2).

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 459 et seq.

C.J.S.

29 C.J.S., Elections §§ 372 et seq., 587 et seq.

ALR.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery, 55 A.L.R.2d 1137.

Constitutional validity of state or local regulation of contributions by or to political action committees, 24 A.L.R.6th 179.

Construction and application of Supreme Court's holding in *Citizens United v. Federal Election Com'n,* 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), that government may not prohibit independent and indirect corporate expenditures on political speech, 65 A.L.R.6th 503.

Validity Under First Amendment of State Disclosure or Reporting Requirements of Political Contributions or Expenditures by Private Individuals or Entities, 51 A.L.R.7th 1.

21-5-30.1. Contributions by regulated entities to elected executive officers or candidates.

(a) Except as otherwise provided in this subsection, the definitions set forth in Code Section 21-5-3 shall be applicable to the provisions of this Code section. As used in this Code section, the term:

(1) "Campaign committee" means the candidate, person, or committee which accepts contributions to bring about the nomination for election or election of an individual to the office of an elected executive officer.

(2) "Contribution" means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money, or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of an individual to the office of an elected executive officer or encouraging the holder of such office to seek reelection. The term "contribution" shall include the payment of a qualifying fee for and on behalf of a candidate for the office of an elected executive officer and any other payment or purchase made for and on behalf of the holder of the office of an elected executive officer or for or on behalf of a candidate for that office when such payment or purchase is made for the purpose of influencing the nomination for election or election of the candidate and is made pursuant to the request or authority of the holder of such office, the candidate, the campaign committee of the candidate, or any other agent of the holder of such office or the candidate. The term "contribution" shall

not include the value of personal services performed by persons who serve on a voluntary basis without compensation from any source.

(3) "Elected executive officer" means the Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, and members of the Public Service Commission.

(4) "Political action committee" means any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations aggregating in excess of $1,000.00 during a calendar year from persons who are members or supporters of the committee and which distributes these funds as contributions to one or more campaign committees of candidates for public office. Such term does not mean a campaign committee.

(5) "Regulated entity" means any person who is required by law to be licensed by an elected executive officer or a board under the jurisdiction of an elected executive officer, any person who leases property owned by or for a state department, any person who engages in a business or profession which is regulated by an elected executive officer or by a board under the jurisdiction of an elected executive officer, or any public utility corporation regulated by the Public Service Commission. For purposes of this paragraph, public utility corporation regulated by the Public Service Commission shall have the same meaning as provided by subsection (f) of Code Section 21-5-30.

(b) No regulated entity and no person or political action committee acting on behalf of a regulated entity shall make a contribution to or on behalf of a person holding office as an elected executive officer regulating such entity or to or on behalf of a candidate for the office of an elected executive officer regulating such entity or to or on behalf of a campaign committee of any such candidate.

(c) No person holding office as an elected executive officer and no candidate for the office of an elected executive officer and no campaign committee of a candidate for the office of an elected executive officer shall accept a contribution in violation of subsection (b) of this Code section.

(d) Nothing contained in this Code section shall be construed to prevent any person who may be employed by a regulated entity, including a person in whose name a license or lease is held, or who is an officer of a regulated entity from voluntarily making a campaign contribution from that person's personal funds to or on behalf of a person holding office as an elected executive officer regulating such entity or to or on behalf of a candidate for the office of an elected executive officer regulating such entity or to or on behalf of a campaign committee of any such candidate; provided, however, that:

(1) The elected executive officer or candidate receiving one or more campaign contributions described in this subsection shall in his or her disclosure report under Code Section 21-5-34 separately identify each contribution and the total of contributions which he or she knows or should have reason to know are described in this subsection; and

(2) It shall be unlawful for any regulated entity or elected executive officer to require another by coercive action to make any such contribution.

History.

Code 1981, § 21-5-30.1, enacted by Ga. L. 1989, p. 784, § 1; Ga. L. 1992, p. 1075, § 4A; Ga. L. 2009, p. 620, § 2/SB 168; Ga. L. 2011, p. 569, § 2/SB 160.

Law reviews.

For note the on the 1989 enactment of this Code section, see 6 Ga. St. U. L. Rev. 240 (1989).

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

JUDICIAL DECISIONS

Section constitutional. — O.C.G.A. § 21-5-30.1 is not an unconstitutional infringement upon freedom of speech as it is narrowly tailored to meet the legitimate interest of preserving the integrity of the democratic process, nor is it an unconstitutional deprivation of property rights without due process since private citizens may contribute freely in their individual capacities. Gwinn v. State Ethics Comm'n, 262 Ga. 855, 426 S.E.2d 890, 1993 Ga. LEXIS 318 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Motor clubs providing indemnification services are not regulated entities for purposes of O.C.G.A. § 21-5-30.1. 1994 Op. Att'y Gen. No. 94-20.

Self-insurers deemed regulated entities. — A company or group which has been issued a certificate of authority to operate a self-insurance program is a regulated entity for purposes of O.C.G.A. § 21-5-30.1. 1994 Op. Att'y Gen. No. 94-20.

Campaign contributions to the Commissioner of Insurance or to a candidate for that office. — An employee of an "industrial loan licensee" or an "insurer" may contribute to the election campaign of the Commissioner of Insurance or a candidate for the Office of Commissioner of Insurance from the employee's own personal funds, and such employee may solicit contributions for such campaigns from third-parties and fellow employees as long as no coercion is utilized in making the solicitation. Solicitation by full time lobbyists employed by insurers or licensees may be construed as "contributions" by their employers. 1990 Op. Att'y Gen. No. U90-19.

Secretary of State. — Corporations which are not otherwise engaged in business activities or professions regulated by the Secretary of State are not regulated entities under O.C.G.A. § 21-5-30.1. 1998 Op. Att'y Gen. No. 98-4.

Examining boards connected to the Secretary of State which issue professional and business licenses are under the jurisdiction of the Secretary of State for purposes of O.C.G.A. § 21-5-30.1. 1998 Op. Att'y Gen. No. 98-4.

Under O.C.G.A. § 21-5-30.1(d), individuals who hold licenses issued by examining boards under the jurisdiction of the Secretary of State are permitted to make campaign contributions from their personal funds to the Secretary of State or a

candidate for that office. 1998 Op. Att'y Gen. No. 98-11.

RESEARCH REFERENCES

ALR.

Constitutional validity of state or local regulation of contributions by or to political action committees, 24 A.L.R.6th 179.

Construction and application of Supreme Court's holding in *Citizens United v. Federal Election Com'n,* 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), that government may not prohibit independent and indirect corporate expenditures on political speech, 65 A.L.R.6th 503.

21-5-30.2. Contributions by public agencies.

(a) Except as otherwise provided in this subsection, the definitions set forth in Code Section 21-5-3 shall be applicable to the provisions of this Code section. As used in this Code section, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, commission, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of this state; and

(D) Every city, county, regional, or other authority established pursuant to the laws of this state.

(2) "Contribution" means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money, or anything of value conveyed or transferred by or on behalf of an agency, without receipt of payment therefor, to any campaign committee, political action committee, or political organization or to any candidate for campaign purposes.

(3) "Elector" means any person who shall possess all of the qualifications for voting now or hereafter prescribed by the laws of this state and who shall have registered in accordance with Chapter 2 of this title.

(4) "Political action committee" means any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations aggregating in excess of $1,000.00 during a calendar year from persons who are members or supporters of the committee and which distributes these funds as contributions to one or more campaign committees of candidates for public office. Such term does not mean a campaign committee.

(5) "Political organization" means an affiliation of electors organized for the purpose of influencing or controlling the policies and conduct of government through the nomination of candidates for public office and, if possible, the election of its candidates to public office.

(6) "Public meeting place" means any county, municipal, or other public building suitable and ordinarily used for public gatherings.

(b) No agency and no person acting on behalf of an agency shall make, directly or indirectly, any contribution to any campaign committee, political action committee, or political organization or to any candidate; but nothing in this Code section shall prohibit the furnishing of office space, facilities, equipment, goods, or services to a public officer for use by the public officer in such officer's fulfillment of such office.

(c) No campaign committee, political action committee, or political organization or candidate shall accept a contribution in violation of subsection (b) of this Code section.

(d) Nothing contained in this Code section shall be construed to:

(1) Affect the authority of the State Personnel Board regarding the regulation of certain political activities of public employees in the classified service as defined by Code Section 45-20-2;

(2) Affect the authority of any agency regarding the regulation of the political activities of such agency's employees;

(3) Affect the use of the capitol building and grounds as specified in Code Section 50-16-4; or

(4) Prohibit the use of public meeting places by political organizations when such meeting places are made available to different political organizations on an equal basis; provided, however, that this paragraph shall not be construed to create a right for a political organization to use a public meeting place.

History.

Code 1981, § 21-5-30.2, enacted by Ga. L. 1990, p. 368, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1994, p. 258, § 4; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-31/HB 642.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

21-5-31. [Reserved] Contributions or expenditures other than through candidate or committee; disclosure of extensions of credit.

History.
Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 1431, § 1; Ga. L. 1988, p. 603, § 2; Ga. L. 1989, p. 790, § 1; repealed by Ga. L. 2005, p. 859, § 11/HB 48, effective January 9, 2006.

Editor's notes.
Ga. L. 2005, p. 859, § 11/HB 48 repealed and reserved this Code section, effective January 9, 2006.

Law reviews.
For article on the 2005 repeal of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

RESEARCH REFERENCES

ALR.
Construction and application of Supreme Court's holding in *Citizens United v. Federal Election Com'n,* 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), that government may not prohibit independent and indirect corporate expenditures on political speech, 65 A.L.R.6th 503.

21-5-32. Accounts to be kept by candidate or campaign committee treasurer.

(a) The candidate or treasurer of each campaign committee shall keep detailed accounts, current within not more than five business days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or committee. The candidate or treasurer shall also keep detailed accounts of all deposits and of all withdrawals made to the separate campaign depository account and of all interest earned on any such deposits.

(b) Accounts kept by the candidate or treasurer of a campaign committee pursuant to this Code section may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by any authorized representative of the commission. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

(c) Records of such accounts:

(1) For a person or a campaign committee campaigning for an elective office with a term of less than four years, shall be preserved for three years from the date of the contribution, expenditure, gift, investment, or loan;

(2) For a person or a campaign committee campaigning for an elective office with a term of four or more years, but fewer than six years, shall be preserved for five years from the date of the contribution, expenditure, gift, investment, or loan;

(3) For a person or a campaign committee campaigning for an elective office with a term of six or more years, shall be preserved for seven years from the date of the contribution, expenditure, gift, investment, or loan; and

(4) For any proposed constitutional amendment, referendum, or local issue or any recall vote, shall be preserved for three years from the date of contribution, expenditure, gift, investment, or loan.

History.

Code 1981, § 21-5-32, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 10; Ga. L. 1988, p. 603, § 3; Ga. L. 2022, p. 3, § 8/SB 120.

The 2022 amendment, effective March 2, 2022, substituted "depository account" for "depository" in the second sentence of subsection (a); and rewrote subsection (c), which read: "Records of such accounts kept by the candidate or campaign committee shall be preserved for three years from the termination date of the campaign for elective office conducted by the candidate or of the campaign committee for any candidate or for three years from the election to bring about the approval or rejection by the voters of any proposed constitutional amendment, referendum, or local issue or of any recall vote."

21-5-33. Disposition of contributions.

(a) Contributions to a candidate, a campaign committee, or a public officer holding elective office and any proceeds from investing such contributions shall be utilized only to defray ordinary and necessary expenses, which may include any loan of money from a candidate or public officer holding elective office to the campaign committee of such candidate or such public officer, incurred in connection with such candidate's campaign for elective office or such public officer's fulfillment or retention of such office.

(b)(1) All contributions received by a candidate or such candidate's campaign committee or a public officer holding elective office in excess of those necessary to defray expenses pursuant to subsection (a) of this Code section and as determined by such candidate or such public officer may only be used as follows:

(A) As donations to any charitable organization described in 26 U.S.C. Section 170(c) as said federal statute exists on March 1, 1986, and which additionally shall include educational, eleemosynary, and nonprofit organizations subject to the prohibitions contained in paragraph (2) of this subsection;

(B) Except as otherwise provided in subparagraph (D) of this paragraph, for transferral without limitation to any national, state, or local committee of any political party or to any candidate;

(C) For transferral without limitation to persons making such contributions, not to exceed the total amount cumulatively contributed by each such transferee;

(D) For use in future campaigns for only that elective office for which those contributions were received. With respect to contributions held on January 1, 1992, or received thereafter, in the event the candidate, campaign committee, or public officer holding elective office has not designated, prior to receiving contributions to which this Code section is applicable, the office for which campaign contributions are received thereby, those contributions shall be deemed to have been received for the elective office which the candidate held at the time the contributions were received or, if the candidate did not then hold elective office, those contributions shall be deemed to have been received for that elective office for which that person was a candidate most recently following the receipt of such contributions;

(E) For repayment of any prior campaign obligations incurred as a candidate; or

(F) For transfer without limitation to one or more political action committees.

(2) Nothing in this Code section shall permit or authorize a candidate to utilize campaign funds for the purpose of making gifts, loans, or investments directly to:

(A) The candidate;

(B) A member of the candidate's family;

(C) Any business in which the candidate or a member of the candidate's family has an ownership interest;

(D) The candidate's trust or a trust of a member of the candidate's family; or

(E) Any nonprofit organization of which the candidate or a member of the candidate's family is on the payroll or has a controlling interest.

(3) Any candidate or public officer holding elective office may provide in the will of such candidate or such public officer that the contributions shall be spent in any of the authorized manners upon the death of such candidate or such public officer; and, in the absence of any such direction in the probated will of such candidate or such public officer, the contributions shall be paid to the treasury of the state party with which such candidate or such public officer was affiliated in such candidate's or such public officer's last election or elective office after the payment of any expenses pursuant to subsection (a) of this Code section. Notwithstanding any other provisions of this paragraph, the personal representative or executor of the estate shall be allowed to use or pay out funds in the campaign account in

any manner authorized in subparagraphs (A) through (F) of paragraph (1) of this subsection.

(c) Contributions and interest thereon, if any, shall not constitute personal assets of such candidate or such public officer.

(d)(1) Contributions received by a campaign committee designed to bring about the recall of a public officer holding elective office or to oppose the recall of a public officer holding elective office or any person or to bring about the approval or rejection by the voters of any proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in any county or municipal election and any proceeds derived from investing such contributions shall be utilized only to defray ordinary and necessary expenses associated with influencing the voters on such issue.

(2) All contributions received by a campaign committee as provided in paragraph (1) of this subsection in excess of those necessary to defray expenses relative to the influencing of voters on such issue as determined by the campaign committee may only be used as follows:

(A) Contributions to any charitable organization described in 26 U.S.C. Section 170(c) as such federal statute exists on March 1, 1986, and which additionally shall include educational, eleemosynary, and nonprofit organizations; or

(B) For repayment on a pro rata basis to persons making such contributions.

History.

Code 1981, § 21-5-33, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 458, § 3; Ga. L. 1990, p. 1327, § 1; Ga. L. 1992, p. 1075, § 5; Ga. L. 2022, p. 3, § 9/SB 120; Ga. L. 2023, p. 608, § 3/HB 572, effective July 1, 2023; Ga. L. 2023, p. 730, § 2(10)/HB 475, effective July 1, 2023.

The 2022 amendment, effective March 2, 2022, in subparagraph (b)(1)(A), substituted "donations" for "contributions" at the beginning and added "subject to the prohibitions contained in paragraph (2) of this subsection" at the end; deleted "or" at the end of subparagraph (b)(1)(D), substituted "; or" for a period at the end of subparagraph (b)(1)(E), and added subparagraph (b)(1)(F); added paragraph (b)(2); and redesignated former paragraph (b)(2) as present paragraph (b)(3).

The 2023 amendments.

The first 2023 amendment, effective July 1, 2023, substituted "subparagraphs (A) through (F)" for "subparagraphs (A) through (E)" in paragraph (b)(3). The second 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, inserted "Section" in subparagraphs (b)(1)(A) and (d)(2)(A).

Editor's notes.

Ga. L. 1990, p. 1327, § 2, not codified by the General Assembly, provides that nothing in that Act shall apply to or affect contributions lawfully converted to the personal use of a candidate or public officer prior to April 11, 1990.

Law reviews.

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article, "SB 221: The Creation of

Election Leadership Committees," see 38 Ga. St. U.L. Rev. 155 (2021).

JUDICIAL DECISIONS

Relationship to bankruptcy. — When the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, the limitation in O.C.G.A. § 21-5-33(c) that campaign funds shall not constitute personal assets was not a restriction on the transfer of a beneficial interest of the debtor in a trust as required by 11 U.S.C. § 541(c)(2). In re Chambers, 451 B.R. 621, 2011 Bankr. LEXIS 1986 (Bankr. N.D. Ga. 2011).

When the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, although O.C.G.A. § 21-5-33(a)-(c) restricted use of the campaign funds, the anti-alienation provision in 11 U.S.C. § 541(c)(1)(A) prevented the state law from excluding the funds from becoming the property of the estate. In re Chambers, 451 B.R. 621, 2011 Bankr. LEXIS 1986 (Bankr. N.D. Ga. 2011).

When the creditor with a general nonpriority unsecured claim for payment for campaign services which the creditor provided to the debtor sought priority status, the Georgia Ethics Act, O.C.G.A. § 21-5-1 et seq., did not provide the creditor with a lien on the campaign funds and, even if Georgia law purported to establish the priority of the claim over others, that state statute would be preempted by the Bankruptcy Code. Rosetta Stone Communs., LLC v. Gordon (In re Chambers), 500 B.R. 221, 2013 Bankr. LEXIS 4484 (Bankr. N.D. Ga. 2013).

OPINIONS OF THE ATTORNEY GENERAL

Section applicable to campaign committees. — A campaign committee which is formed for the purpose of accepting contributions for, making contributions to, or making expenditures on behalf of a candidate, is subject to the requirements of O.C.G.A. § 21-5-33 relative to the disposition of excess contributions in the same manner as a candidate's campaign committee. 1987 Op. Att'y Gen. No. 87-26.

Compensation of secretary for political action committee. — A secretary who maintains the records of a political action committee may be compensated from committee funds under state law since the provisions of O.C.G.A. § 21-5-33 which limit the distribution of funds received by the candidate and campaign committees would not apply to political action committees and, even assuming that they did, the funds can be utilized to defray ordinary and necessary expenses involved in a campaign. 1987 Op. Att'y Gen. No. 87-18 (But see 1989 Op. Att'y Gen. No. 89-54).

Distribution of campaign contributions for future campaigns. — Elected officials may distribute campaign contributions in excess of those necessary to defray expenses to a national, state, or local committee of their political party for use in future campaigns, as long as the transfer is not made for the purpose of avoiding the restrictions contained in O.C.G.A. § 21-5-33. 1992 Op. Att'y Gen. No. U92-18.

Use of campaign contributions for political advertising. — There is no prohibition on the use of campaign contributions for political advertising in publications. 1992 Op. Att'y Gen. No. U92-18.

Campaign contributions and nonprofit organizations. — Nonprofit organizations may receive those campaign contributions which are in excess of those necessary to defray expenses. 1992 Op. Att'y Gen. No. U92-18.

21-5-34. Disclosure reports.

(a)(1)(A) The candidate or the chairperson or treasurer of each campaign committee organized to bring about the nomination or election of a candidate for any office and the chairperson or treasurer of every campaign committee designed to bring about the recall of a public officer or to oppose the recall of a public officer or designed to bring about the approval or rejection by the voters of any proposed constitutional amendment, state-wide proposed question, or state-wide referendum shall electronically sign and file with the commission the required campaign contribution disclosure reports; provided, however, that public offices listed in subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3 shall be subject to signing and filing requirements as prescribed by paragraph (3) or (4) of this subsection, and recalls for such offices shall be subject to signing and filing requirements the same as required of candidates for such offices as prescribed by paragraph (3) or (4) of this subsection.

(B) The chairperson or treasurer of each independent committee shall file the required disclosure reports with the commission.

(2)(A) Any campaign committee which accepts contributions or makes expenditures designed to bring about the approval or rejection by the voters of any proposed question which is to appear on the ballot in this state shall register with the commission and file campaign contribution disclosure reports as prescribed by this chapter or, in the case of any proposed question which is to appear on the ballot in a county or municipal election, shall register and file campaign disclosure reports with the same officials as prescribed by paragraph (3) or (4) of this subsection for candidates for county or municipal offices; provided, however, that such reports shall only be required if such campaign committee has received contributions which total more than $500.00 or if such campaign committee has made expenditures which total more than $500.00. All advertising pertaining to referendums shall identify the principal officer of such campaign committee by listing or stating the name and title of the principal officer.

(B) If a campaign committee is required to file a report with the commission under subparagraph (A) of this paragraph, such report shall be electronically filed. Any such report shall be filed 15 days prior to the date of the election; and a final report shall be filed prior to December 31 of the election year.

(3) A candidate for a public office listed in subparagraph (F) of paragraph (22) of Code Section 21-5-3 or the chairperson or treasurer of such candidate's campaign committee shall sign and file the

required disclosure reports with the election superintendent in the county of election. Upon receipt of any such report, the election superintendent shall cause such report to be available for inspection and copying in accordance with Article of Chapter 18 of Title 50. The election superintendent shall transmit a copy of each such report to the commission, electronically by eFiling or eFax, not later than 30 days after the end of the grace period. No fine, fee, or sanction, including but not limited to identifying a candidate as having filed late or failed to file, shall be imposed by the commission on a candidate for the failure of the election superintendent to timely transmit a copy of such report. The commission is authorized to impose civil penalties pursuant to subparagraph (b)(14)(C) of Code Section 21-5-6 against an election superintendent who fails to properly transmit a copy of each such report, upon finding that said superintendent willfully failed to comply with the provisions of this chapter.

(4) A candidate for a public office listed in subparagraph (G) of paragraph (22) of Code Section 21-5-3 or the chairperson or treasurer of such candidate's campaign committee shall sign and file the required disclosure reports with the municipal clerk in the municipality of election or, if there is no clerk, with the chief executive officer of the municipality; provided, however, that a municipality and a county may enter into an agreement whereby such candidates, chairpersons, or treasurers shall file the required disclosure reports with the county election superintendent instead. Upon receipt of any such report, the municipal clerk, chief executive officer of the municipality, or county election superintendent, as applicable, shall cause such report to be available for inspection and copying in accordance with Article 4 of Chapter 18 of Title 50. The municipal clerk, chief executive officer of the municipality, or county election superintendent, as applicable, shall transmit a copy of each such report to the commission, electronically by eFiling or eFax, not later than 30 days after the end of the grace period. No fine, fee, or sanction, including but not limited to identifying a candidate as having filed late or failed to file, shall be imposed by the commission on a candidate for the failure of the municipal clerk, chief executive officer of the county, or county election superintendent to timely transmit a copy of such report. The commission is authorized to impose civil penalties pursuant to subparagraph (b)(14)(C) of Code Section 21-5-6 against a municipal clerk, chief executive officer of the county, or county election superintendent who fails to properly transmit a copy of each such report, upon finding that said municipal clerk, chief executive officer of the county, or county election superintendent willfully failed to comply with the provisions of this chapter.

(b)(1) All reports shall list the following:

(A) As to any contribution of more than $100.00, its amount and date of receipt, the election for which the contribution has been accepted and allocated, along with the name and mailing address of the contributor, and, if the contributor is an individual, that individual's occupation and the name of his or her employer. Such contributions shall include, but shall not be limited to, the purchase of tickets for events such as dinners, luncheons, rallies, and similar fund-raising events coordinated for the purpose of raising campaign contributions for the reporting person;

(B) As to any expenditure of more than $100.00, its amount and date of expenditure, the name and mailing address of the recipient receiving the expenditure, and, if that recipient is an individual, that individual's occupation and the name of his or her employer and the general purpose of the expenditure;

(C) When a contribution consists of a loan, advance, or other extension of credit, the report shall also contain the name of the lending institution or party making the advance or extension of credit and the names, mailing addresses, occupations, and places of employment of all persons having any liability for repayment of the loan, advance, or extension of credit; and, if any such persons shall have a fiduciary relationship to the lending institution or party making the advance or extension of credit, the report shall specify such relationship;

(D) Total contributions received and total expenditures shall be reported for an election cycle as follows:

(i) The first report filed after an election year shall list the cash on hand brought forward from the previous election cycle, if any, and the total contributions received during the period covered by the report;

(ii) Subsequent reports shall list the total contributions received during the period covered by the report and the cumulative total of contributions received during the election cycle;

(iii) The first report filed after an election year shall list the total expenditures made during the period covered by the report;

(iv) Subsequent reports shall list the total expenditures made during the period covered by the report, the cumulative total of expenditures made during the election cycle, and net balance on hand; and

(v) If a public officer seeks reelection to the same public office, or if the public officer is a member of the General Assembly seeking reelection in another district as a result of redistricting, the net balance on hand at the end of the current election cycle

shall be carried forward to the first report filed after the election year;

(E) The corporate, labor union, or other affiliation of any political action committee or independent committee making a contribution of more than $100.00;

(F) Any investment made with funds of a campaign committee, independent committee, or political action committee and held outside such committee's official depository account during each reporting period for which an investment exists or a transaction applying to an identifiable investment is made. The report shall identify the name of the entity or person with whom such investment was made, the initial and any subsequent amount of such investment if such investment was made during the reporting period, and any profit or loss from the sale of such investment which occurred during such reporting period; and

(G) Total debt owed on the last day of the reporting period.

(2) Each report shall be in such form as will allow for the separate identification of a contribution or contributions which are less than $100.00 but which become reportable due to the receipt of an additional contribution or contributions which when combined with such previously received contribution or contributions cumulatively equal or exceed $100.00.

(c) Candidates or campaign committees which accept contributions, make expenditures designed to bring about the nomination or election of a candidate, or have filed a declaration of intention to accept campaign contributions pursuant to subsection (g) of Code Section 21-5-30 shall file campaign contribution disclosure reports in compliance with the following schedule:

(1) In each nonelection year:

(A) Candidates for public office and public officers as defined in subparagraphs (A), (C), and (D) of paragraph (22) of Code Section 21-5-3 shall file on January 31 and June 30.

(B) Candidates for public office and public officers as defined in subparagraphs (B), (F), and (G) of paragraph (22) of Code Section 21-5-3 shall file on June 30 and December 31;

(2) In each election year:

(A) On January 31, April 30, June 30, September 30, October 25, and December 31;

(B) Six days before any run-off primary or election in which the candidate is listed on the ballot; and

(C) During the period of time between the last report due prior to the date of any election for which the candidate is qualified and the date of such election, all contributions of $1,000.00 or more shall be reported within two business days of receipt and also reported on the next succeeding regularly scheduled campaign contribution disclosure report; provided, however, that this subparagraph shall only apply to contributions of $1,000.00 or more that are designated for the same actual election as the one for which the individual is currently a candidate. Nothing in this Code section shall be construed to require a contribution of $1,000.00 or more that is designated as a general election contribution to be reported during the two business day report period of a primary election;

(3) If the candidate is a candidate in a special primary or special primary runoff, 15 days prior to the special primary and six days prior to the special primary runoff; and

(4) If the candidate is a candidate in a special election or special election runoff, 15 days prior to the special election and six days prior to the special election runoff.

All persons or entities required to file reports shall have a five-day grace period in filing the required reports, except that the grace period shall be two days for required reports prior to run-off primaries or run-off elections, and no grace period shall apply to contributions required to be reported within two business days. Reports required to be filed within two business days of a contribution shall be reported by facsimile or electronic transmission. Any facsimile filing shall also have an identical electronic filing within five business days following the transmission of such facsimile filing. Each report required in the election year shall contain cumulative totals of all contributions which have been received and all expenditures which have been made in support of the campaign in question and which are required, or previously have been required, to be reported.

(d) In the event any candidate covered by this chapter has no opposition in either a primary or a general election and receives no contribution of more than $100.00, such candidate shall only be required to make the initial and final report as required under this chapter.

(d.1)(1) In the event a candidate for nomination or election to a public office listed in subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3 or the chairperson or treasurer of a campaign committee organized to bring about the nomination or election of such candidate signs and files with the appropriate official specified by paragraph (3) or (4) of subsection (a) of this Code section a written

notice that such candidate or campaign committee does not intend to accept during such election cycle a combined total of contributions exceeding $2,500.00 for the campaign nor make a combined total of expenditures exceeding $2,500.00 for the campaign in such election cycle, then such candidate or campaign committee shall not be required to file a report under this Code section. The appropriate official shall transmit an electronic copy of the written notice by eFiling or eFax to the commission within ten days of receipt of such notice. The failure of the appropriate official to timely transmit such copy of the written notice to the commission shall not disqualify the candidate or campaign committee from the exemption from report filing provided by this paragraph.

(2) If such candidate or campaign committee exceeds the $2,500.00 limit for either accepting contributions or making expenditures for such campaign during such election cycle as specified in paragraph (1) of this subsection but does not accept a combined total of contributions exceeding $5,000.00 in such election cycle nor make expenditures exceeding $5,000.00 in such election cycle, then such candidate or campaign committee shall be required to file only the June 30 and December 31 reports required by paragraph (2) of subsection (c) of this Code section. The first such report shall include all contributions received and expenditures made beginning January 1 of such calendar year.

(3) If such candidate or campaign committee accepts a combined total of contributions exceeding $5,000.00 or makes expenditures exceeding $5,000.00 for such campaign during any such election cycle, then such candidate or campaign committee chairperson or treasurer shall thereupon be subject to the reporting requirements of this Code section the same as if the written notice authorized by this subsection had not been filed.

(e) Any person who makes contributions to, accepts contributions for, or makes expenditures on behalf of candidates, and any independent committee, shall file a registration in the same manner as is required of campaign committees prior to accepting or making contributions or expenditures. Such persons, other than independent committees, shall also file campaign contribution disclosure reports at the same times as required of the candidates they are supporting and a December 31 campaign contribution disclosure report regardless of whether the candidate they are supporting has a December 31 campaign contribution disclosure report due. The following persons shall be exempt from the foregoing registration and reporting requirements:

(1) Individuals making aggregate contributions of $25,000.00 or less directly to candidates or the candidates' campaign committees in one calendar year;

(2) Persons other than individuals making aggregate contributions and expenditures to or on behalf of candidates of $25,000.00 or less in one calendar year; and

(3) Contributors who make contributions to only one candidate during one calendar year.

(f)(1) Any independent committee which accepts contributions or makes expenditures for the purpose of affecting the outcome of an election or advocates the election or defeat of any candidate shall register with the commission prior to accepting contributions or making expenditures and shall file disclosure reports as follows:

(A) On the first day of each of the two calendar months preceding any such election;

(B) Two weeks prior to the date of such election; and

(C) Within the two-week period prior to the date of such election the independent committee shall report within two business days any contributions or expenditure of more than $1,000.00.

The independent committee shall file a final report prior to December 31 of the election year and shall file supplemental reports on June 30 and December 31 of each year that such independent committee continues to accept contributions or make expenditures.

(2) Reports filed by independent committees shall list the following:

(A) The amount and date of receipt, along with the name, mailing address, occupation, and employer of any person making a contribution of more than $100.00;

(B) The name, mailing address, occupation, and employer of any person to whom an expenditure or provision of goods or services of the value of more than $100.00 is made and the amount, date, and general purpose thereof, including the name of the candidate or candidates, if any, on behalf of whom, or in support of or in opposition to whom, the expenditure or provision was made;

(C) Total expenditures made as follows:

(i) Expenditures shall be reported for the applicable reporting year;

(ii) The first report of a reporting year shall list the total expenditures made during the period covered by the report; and

(iii) Subsequent reports shall list the total expenditures made during the period covered by the report, the cumulative total of expenditures made during the reporting year, and net balance on hand; and

(D) The corporate, labor union, or other affiliation of any political action committee, candidate, campaign committee, or independent committee making a contribution of the value of more than $100.00.

(3) Whenever any independent committee makes an expenditure for the purpose of financing any communication intended to affect the outcome of an election, such communication shall clearly state that it has been financed by such independent committee.

(g) Any campaign committee which accepts contributions or makes expenditures designed to bring about the recall of a public officer or to oppose the recall of a public officer shall file campaign contribution disclosure reports as follows:

(1) An initial report shall be filed within 15 days after the date when the official recall petition forms were issued to the sponsors;

(2) A second report shall be filed 45 days after the filing of the initial report;

(3) A third report shall be filed within 20 days after the election superintendent certifies legal sufficiency or insufficiency of a recall petition; and

(4) A final report shall be filed prior to December 31 of the year in which the recall election is held or, in any case where such recall election is not held, a final report shall be filed prior to December 31 of any year in which such campaign committee accepts such contributions or makes such expenditures.

(h) Any campaign committee which accepts contributions or makes expenditures designed to bring about the approval or rejection by the voters of a proposed constitutional amendment or a state-wide referendum shall file a campaign contribution disclosure report 75, 45, and 15 days prior to the date of the election and shall file a final report prior to December 31 of the election year.

(i)(1) Any person elected to a public office who is required to file campaign contribution disclosure reports pursuant to this article shall, upon leaving public office with excess contributions, be required to file supplemental campaign contribution disclosure reports on June 30 and December 31 of each year until such contributions are expended in a campaign for elective office or used as provided in subsection (b) of Code Section 21-5-33.

(2) Any person who is an unsuccessful candidate in an election and who is required to file campaign contribution disclosure reports pursuant to this article shall for the remainder of the election cycle file such reports at the same times as a successful candidate and thereafter, upon having excess contributions from such campaign, be required to file a supplemental campaign contribution disclosure report no later than December 31 of each year until such contributions are expended in a campaign for elective office or used as provided in subsection (b) of Code Section 21-5-33. Any unsuccessful candidate in an election who is required to file campaign contribution disclosure reports pursuant to this article and who receives contributions following such election to retire debts incurred in such campaign for elective office shall be required to file a supplemental campaign contribution disclosure report no later than December 31 of each year until such unpaid expenditures from such campaign are satisfied.

(j) Notwithstanding any other provision of this chapter to the contrary, soil and water conservation district supervisors elected pursuant to Article 2 of Chapter 6 of Title 2, the "Soil and Water Conservation Districts Law," shall not be required to file campaign contribution disclosure reports under this Code section.

(k)(1) In addition to other penalties provided under this chapter, a late fee of $125.00 shall be imposed by the person or entity with which filing is required for each report that is filed late, and notice of such late fee shall be sent to the candidate and the candidate's committee in the same manner by which the penalized report was filed with the commission. However, if the report in question was not filed or was filed with the commission in a manner other than electronic filing or certified mail, return receipt requested, the commission shall utilize certified mail, return receipt requested, to notify the candidate and the candidate's committee of the late fee due. The notice shall include the schedule of increasing late fees for late filings and the dates upon which such late fees shall be increased. In addition, a late fee of $250.00 shall be imposed on the fifteenth day after the due date for such report if the report has not been filed by such date. A late fee of $1,000.00 shall be imposed on the forty-fifth day after the due date for such report if such report has not been filed. Notice by electronic means does not satisfy the requirements of this paragraph; and any increased late fees shall be stayed until at least ten days after proper notice has been given as specified in this paragraph.

(2) The commission shall retain $25.00 of the first late fee received by the commission for processing pursuant to the provisions of Code Section 45-12-92.1.

(l) It shall be the duty of the commission or other official when it receives for filing any disclosure report or statement or other document that may be filed by mail to maintain with the filed document a copy of the postal markings or statutory overnight delivery service markings of any envelope, package, or wrapping in which the document was delivered for filing if mailed or sent after the date such filing was due.

(m) Any person or entity which is required to be registered under this Code section shall file a termination statement together with its final campaign contribution disclosure report as required by this Code section within ten days of the dissolution of a campaign or committee. The termination statement shall identify the person responsible for maintaining campaign records as required by this chapter.

History.

Code 1981, § 21-5-34, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 11; Ga. L. 1987, p. 458, §§ 4, 5; Ga. L. 1988, p. 603, §§ 4, 5; Ga. L. 1989, p. 10, § 1; Ga. L. 1990, p. 643, § 1; Ga. L. 1990, p. 922, §§ 3, 4; Ga. L. 1992, p. 1075, § 6; Ga. L. 1994, p. 257, § 1; Ga. L. 1994, p. 258, §§ 5-9; Ga. L. 1996, p. 26, § 1; Ga. L. 2000, p. 1491, § 3; Ga. L. 2005, p. 859, § 12/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2009, p. 620, § 3/SB 168; Ga. L. 2010, p. 9, § 1-47/HB 1055; Ga. L. 2010, p. 1173, § 11/SB 17; Ga. L. 2011, p. 19, § 4/HB 232; Ga. L. 2011, p. 590, § 1/HB 143; Ga. L. 2013, p. 173, § 3/HB 143; Ga. L. 2013, p. 540, § 3/HB 142; Ga. L. 2014, p. 1, § 9/HB 310; Ga. L. 2014, p. 9, § 2/SB 297; Ga. L. 2016, p. 173, § 7/SB 199; Ga. L. 2018, p. 1112, § 21/SB 365; Ga. L. 2019, p. 929, § 1/SB 213; Ga. L. 2023, p. 608, § 4/HB 572, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, added the last sentences of paragraphs (a)(3) and (a)(4); added the proviso and the last sentence of subparagraph (a)(2)(C); and deleted the former first sentence of subsection (m), which read: "Except when electronic filing is required, the mailing of such reports by United States mail with adequate postage affixed within the required filing time as determined by the official United States postage date cancellation shall be prima-facie evidence of filing."

Cross references.

District supervisors; election procedure for elected supervisors, § 2-6-30.

Code Commission notes.

The amendment of this Code section by Ga. L. 2010, p. 9, § 1-47, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1173, § 11. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-3, in 2013, the amendment of subsection (n) of this Code section by Ga. L. 2013, p. 173, § 3, was treated as impliedly repealed and superseded by Ga. L. 2013, p. 540, § 3, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974) and Ga. L. 2013, p. 141, § 54(d)/HB 79.

Pursuant to Code Section 28-9-5, in 2019, "paragraph (22)" was substituted for "paragraph 22" in subparagraphs (c)(1)(A) and (c)(1)(B).

Editor's notes.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by the General Assembly, provides that for purposes of issuing rules and regulations, that Act became effective May 1, 2000.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government

Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part: "This Act shall become effective on January 10, 2011, and shall apply to all reports filed on and after such date; provided, however, that if Code Section 45-12-92.1 as enacted by HB 1055 at the regular session of the 2010 General Assembly does not become law, then the following provisions as enacted by this Act shall not become effective and shall be reserved instead: paragraph (2) of subsection (k) of Code Section 21-5-34; paragraph (2) of subsection (f) of Code Section 21-5-50; division (f)(2)(D)(ii) of Code Section 21-5-71; and division (f)(2)(E)(ii) of Code Section 21-5-71." HB 1055 became effective May 12, 2010.

Ga. L. 2011, p. 19, § 10/HB 232, provides: "'This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Law reviews.

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 93 (2014).

For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 123 (2019).

For article, "SB 221: The Creation of Election Leadership Committees," see 38 Ga. St. U.L. Rev. 155 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 155, are included in the annotations for this Code section.

Disclosure of contributions to political campaigns does not violate the right to a secret ballot. Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68, 1974 Ga. LEXIS 987 (1974) (decided under Ga. L. 1974, p. 155).

Liability for failure to report "common source" contributions. — Candidate charged with failure to report certain "common source" contributions, as defined by O.C.G.A. § 21-5-30, could not be penalized for such failure, even though the candidate knew the contributions were from a common source where it was the candidate's campaign treasurer who was unaware of the common source of the contributions and who filed the campaign report as authorized by O.C.G.A. § 21-5-34(a)(3). State Ethics Comm'r v. Moore, 214 Ga. App. 236, 447 S.E.2d 687, 1994 Ga. App. LEXIS 847 (1994), cert. denied, No. S94C1821, 1994 Ga. LEXIS 1180 (Ga. Dec. 2, 1994).

Venue in criminal cases. — When the defendants were indicted under O.C.G.A. § 21-5-9 for failing to file documents with the State Ethics Commission under O.C.G.A. § 21-5-34, venue was in the county where the commission was exclusively located; the place fixed for performance of the required act fixed the situs of the alleged crime. McKinney v. State, 282 Ga. 230, 647 S.E.2d 44, 2007 Ga. LEXIS 479 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under the former chapter are included in the annotations for this Code section.

Designated organizations to fulfill requirements. — Disclosure requirements of the former chapter must be fulfilled by the organizations designated in the former provisions. 1975 Op. Att'y Gen.

No. 75-53 (decided under former chapter).

Corporation accepting contributions on behalf of candidates was subject to reporting requirements of the former provisions. 1981 Op. Att'y Gen. No. 81-109 (decided under former chapter).

Incumbent receiving or making campaign contributions during nonelection years. — The incumbent of a covered office who receives campaign contributions or makes campaign expenditures during nonelection years must report the transactions, both in the incumbent's supplemental report and in the initial report during the calendar year in which an election for the office the incumbent holds occurs. 1977 Op. Att'y Gen. No. 77-84 (decided under former chapter).

Withdrawal of candidate prior to reporting dates surrounding primary would not relieve the candidate of compliance with those dates in light of the broad definition of the term "candidate" and the absence of any applicable limiting provision. 1976 Op. Att'y Gen. No. 76-22 (decided under former chapter).

Reports can be omitted only where the candidate has no opposition either in the primary or in the general election. 1976 Op. Att'y Gen. No. 76-22 (decided under former chapter).

Reports before and after primary apply to all candidates. — The General Assembly intended for the 45, 15 and ten-day reports before and after the primary to apply to all candidates, regardless of the methods they employ in the seeking of political office. 1976 Op. Att'y Gen. No. 76-22 (decided under former chapter).

General election filing date applies only to general election candidates. — The filing dates which the former chapter specified for campaign financing disclosure reports are of general applicability and are ordinarily not affected by the method or procedures used by a "candidate" to seek office, but the "15 days prior to the general election" filing date applies only to those candidates in the general election campaign. 1976 Op. Att'y Gen. No. 76-22 (decided under former chapter).

Reporting dates enforceable against write-in candidate. — While a write-in candidate who has in fact filed a notice of intention of candidacy prior to any of the fiscal disclosure report filing dates surrounding the primary must comply with those report requirements occurring after the individual has become a candidate, and while an individual who intends to subsequently become a write-in candidate should file such reports, the practical consequence is probably that only those reporting dates fixed with respect to the general election can be enforced against a write-in candidate. 1976 Op. Att'y Gen. No. 76-22 (decided under former chapter).

Filing of supplemental disclosure report. — Person elected to covered office must file supplemental disclosure report on or before December 31 of each year during the person's term of office, provided that a contribution or expenditure was received or made during the year which is covered. 1977 Op. Att'y Gen. No. 77-10 (decided under former chapter).

Fee for filing of campaign financing disclosure reports. — Former Code 1933, § 24-1716 (see now O.C.G.A. § 15-9-60), in authorizing the probate judge to charge a fee for the filing of any "application, petition, or case" where no costs are prescribed, did not authorize charging this fee for the filing of campaign financing disclosure reports by candidates for county office. 1980 Op. Att'y Gen. No. U80-29 (decided under former chapter).

Individual disclosure reports not required. — Although O.C.G.A. § 21-5-34 requires a campaign committee formed for the purpose of opposing a local option sales tax referendum to file a campaign contribution disclosure report, the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq., does not compel each contributor to such a committee to file a separate disclosure report. 1994 Op. Att'y Gen. No. U94-2.

RESEARCH REFERENCES

C.J.S.

29 C.J.S., Elections, § 597.

ALR.

Constitutionality, construction, and application of statute or regulatory action respecting political advertising — print media cases, 51 A.L.R.6th 359.

Constitutionality, construction, and application of statute or regulatory activity respecting political advertising nonprint media cases, or cases implicating both print and nonprint media, 53 A.L.R.6th 491.

21-5-34.1. Filing campaign contribution disclosure reports electronically.

(a) Candidates, candidate committees, and public officers who are required to file campaign contribution disclosure reports with the commission shall use electronic means to file such reports with the commission using means prescribed by the commission to file such reports.

(b) The filing of any campaign disclosure report required under this article shall constitute an affirmation that such report is true, complete, and correct.

(c) Candidates seeking election to county or municipal offices may use electronic means to file their campaign contribution disclosure reports if such method is made available or may file by certified mail, statutory overnight delivery, or personal delivery.

(d) Political action committees, independent committees, and any persons otherwise required by this article to file campaign contribution disclosure reports shall use electronic means to file such reports if such method is made available.

(e) The filing of any campaign contribution disclosure report required under this article shall constitute an affirmation that the report is true, complete, and correct.

History.

Code 1981, § 21-5-34.1, enacted by Ga. L. 2000, p. 1491, § 3; Ga. L. 2005, p. 859, § 13/HB 48; Ga. L. 2009, p. 620, § 4/SB 168; Ga. L. 2010, p. 1173, § 12/SB 17; Ga. L. 2011, p. 19, § 5/HB 232; Ga. L. 2013, p. 173, § 4/HB 143.

Editor's notes.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by the General Assembly, provides that for purposes of issuing rules and regulations, that Act became effective May 1, 2000.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on

and after January 10, 2011.

Ga. L. 2011, p. 19, § 10/SB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Law reviews.

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

21-5-34.2. Leadership committee defined; operation; separate from campaign committees.

(a) As used in this Code section, the term "leadership committee" means a committee, corporation, or organization chaired by the Governor, the Lieutenant Governor, the nominee of a political party for Governor selected in a primary election in the year in which he or she is nominated, or the nominee of a political party for Lieutenant Governor selected in a primary election in the year in which he or she is nominated. Such term shall also mean up to two political action committees designated by the majority caucus of the House of Representatives, the minority caucus of the House of Representatives, the majority caucus of the Senate, and the minority caucus of the Senate. No person may chair more than one leadership committee.

(b) A leadership committee may receive contributions from persons who are members or supporters of the leadership committee and expend such funds as permitted by this Code section.

(c) If a person chairing a leadership committee ceases to hold the office or the status as a nominee of a political party as described in subsection (a) of this Code section, such person shall transfer the remaining assets of the leadership committee, if any, to another leadership committee within 60 days, name an eligible person as the new chairperson of the leadership committee within 60 days, or dispose of the leadership committee's assets as provided by Code Section 21-5-33.

(d) A leadership committee may accept contributions or make expenditures for the purpose of affecting the outcome of any election or advocating for the election or defeat of any candidate, may defray ordinary and necessary expenses incurred in connection with any candidate's campaign for elective office, and may defray ordinary and necessary expenses incurred in connection with a public officer's fulfillment or retention of such office.

(e) A leadership committee which accepts contributions or makes expenditures in excess of $500.00 shall register with the commission within ten days of such accepted contribution or such expenditure and, thereafter, shall file disclosure reports pursuant to the schedule defined

for candidates and campaign committees in subsection (c) of Code Section 21-5-34. Such disclosure reports shall be made pursuant to subsection (b) of Code Section 21-5-34. The contribution limits in Code Section 21-5-41 shall not apply to contributions to a leadership committee or expenditures made by a leadership committee in support of a candidate or a group of named candidates. All communications paid for by expenditures of the leadership committee shall contain a disclaimer, either audibly or in writing, that the communication is paid for by the leadership committee, unless such disclaimer is impractical.

(f) A leadership committee shall be a separate legal entity from a candidate's campaign committee and shall not be considered an independent committee.

History.
Code 1981, § 21-5-34.2, enacted by Ga. L. 2021, p. 467, § 1/SB 221.
Effective date.
This Code section became effective July 1, 2021.

Law reviews.
For article, "SB 221: The Creation of Election Leadership Committees," see 38 Ga. St. U.L. Rev. 155 (2021).

21-5-35. Acceptance of contributions or pledges during legislative sessions.

(a) No member of the General Assembly or that member's campaign committee or public officer elected state wide or campaign committee of such public officer shall seek or accept a contribution or a pledge of a contribution to the member, the member's campaign committee, or public officer elected state wide, or campaign committee of such public officer during a legislative session.

(b) Subsection (a) of this Code section shall not apply to:

(1) The receipt of a contribution which is returned with reasonable promptness to the donor or the donor's agent;

(2) The receipt and acceptance during a legislative session of a contribution consisting of proceeds from a dinner, luncheon, rally, or similar fundraising event held prior to the legislative session;

(3) The receipt of a contribution by a political party consisting of the proceeds from a dinner, luncheon, rally, or similar fundraising event in which a member of the General Assembly or a public officer elected state wide participates; or

(4) A judicial officer elected state wide, a candidate for a judicial office elected state wide, or a campaign committee of such judicial officer or candidate.

History.

Code 1981, § 21-5-35, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1990, p. 922, § 5; Ga. L. 1994, p. 258, § 10; Ga. L. 2005, p. 859, § 14/HB 48; Ga. L. 2013, p. 173, § 5/HB 143.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For article, "Elections: Elections and Primaries Through the Pandemic," see 37 Ga. St. U.L. Rev. 241 (2020).

JUDICIAL DECISIONS

Preempted by federal law. — As applied to candidates for federal office, O.C.G.A. § 21-5-35 is preempted by the Federal Election Campaign Act, 2 U.S.C. § 431 et seq. Teper v. Miller, 82 F.3d 989, 1996 U.S. App. LEXIS 9280 (11th Cir. 1996).

OPINIONS OF THE ATTORNEY GENERAL

Soliciting pledges should be avoided. — While the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq., does not expressly prohibit an incumbent member of the General Assembly from soliciting a pledge or setting goals for contributions during a legislative session, such actions would clearly be contrary to the policies and purposes of the Act and should be avoided. 1995 Op. Att'y Gen. No. U95-27.

21-5-36. Disposition of reports; handling of complaints and violations.

(a)(1) It shall be the duty of the commission to make the campaign contribution disclosure reports available for public inspection and copying during regular office hours commencing as soon as practicable after such reports are filed. The commission shall have the authority to charge a fee for copying such reports not to exceed the actual cost of such copying. The commission shall preserve such reports for a period of five years from the date upon which they are received.

(2) A qualifying officer shall notify the commission in writing of the names and addresses of all candidates and offices sought in any election within ten days of the close of the qualification period.

(b) After receiving original reports, the commission has the duty to inspect each report filed by candidates or by a campaign committee for conformity with the law and to notify the candidate or campaign committee immediately if the report does not conform with the law or is in technical violation of filing requirements. Such notification shall be by electronic means and regular United States mail.

(c) Within ten business days of the close of the qualification period, qualifying officers shall electronically report to the commission the

names and addresses of all candidates and offices sought by each candidate in an election and the qualifying date for such candidate.

History.

Code 1981, § 21-5-36, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 12; Ga. L. 2010, p. 1173, § 13/SB 17.

Editor's notes.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

OPINIONS OF THE ATTORNEY GENERAL

Identifying persons not filing timely financial disclosure statements. — While there is no statutory authority to compel the local filing officers to report candidates or public officers who have not timely filed their financial disclosure statements, O.C.G.A. T. 21, Ch. 5 requires the Ethics Commission to identify such persons. 1987 Op. Att'y Gen. No. 87-26.

ARTICLE 2A

CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE

21-5-40. Definitions.

As used in this article, the term:

(1) "Affiliated committees" means any two or more political committees (including a separate segregated fund) established, financed, maintained, or controlled by the same business entity, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof.

(2) "Affiliated corporation" means with respect to any business entity any other business entity related thereto: as a parent business entity; as a subsidiary business entity; as a sister business entity; by common ownership or control; or by control of one business entity by the other.

(3) "Business entity" shall have the same meaning as provided in Code Section 21-5-3.

(4) Reserved.

(5) "Person" means an individual.

(6) "Political committee" means: (A) any partnership, committee, club, association, organization, party caucus of the House of Representatives or the Senate, or similar entity (other than a business entity) or any other group of persons or entities which makes a contribution; or (B) any separate segregated fund.

(6.1) "Political party" means any political party as that term is defined in paragraph (25) of Code Section 21-2-2, as amended; provided, however, that for purposes of this article, local, state, and national committees shall be separate political parties.

(6.2) "Public office" means the office of each elected public officer as specified in paragraph (22) of Code Section 21-5-3.

(7) "Separate segregated fund" means a fund which is established, administered, and used for political purposes by a business entity, labor organization, membership organization, or cooperative and to which the business entity, labor organization, membership organization, or cooperative solicits contributions.

History.

Code 1981, § 21-5-40, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 7; Ga. L. 1994, p. 258, § 11; Ga. L. 1998, p. 295, § 3; Ga. L. 2000, p. 1491, § 4; Ga. L. 2001, p. 20, § 1; Ga. L. 2005, p. 859, § 15/HB 48; Ga. L. 2010, p. 1173, § 14/SB 17.

Editor's notes.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by the General Assembly, provides that for purposes of issuing rules and regulations, that Act became effective May 1, 2000.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Law reviews.

For article, "Georgia Campaign Finance and Disclosure Law," see 27 Ga. St. B. J. 175 (1991).

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Labor union as "political committee." — For purposes of determining the maximum amount of contributions permitted to an individual candidate for office under O.C.G.A. § 21-5-43, a labor union is a "political committee" pursuant to O.C.G.A. § 21-5-40(6). 1994 Op. Att'y Gen. No. 94-16.

RESEARCH REFERENCES

Am. Jur. 2d.

26 Am. Jur. 2d, Elections, § 459 et seq.

C.J.S.

29 C.J.S., Elections §§ 372 et seq., 587 et seq.

21-5-41. Maximum allowable contributions.

(a) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for state-wide elected office which in the aggregate for an election cycle exceed:

(1) Five thousand dollars for a primary election;

(2) Three thousand dollars for a primary run-off election;

(3) Five thousand dollars for a general election; and

(4) Three thousand dollars for a general election runoff.

(b) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for the General Assembly or public office other than state-wide elected office which in the aggregate for an election cycle exceed:

(1) Two thousand dollars for a primary election;

(2) One thousand dollars for a primary run-off election;

(3) Two thousand dollars for a general election; and

(4) One thousand dollars for a general election runoff.

(c) No business entity shall make any election contributions to any candidate which when aggregated with contributions to the same candidate for the same election from any affiliated corporations exceed the per election maximum allowable contribution limits for such candidate as specified in subsection (a) of this Code section.

(d) Candidates and campaign committees may separately account for contributions pursuant to Code Section 21-5-43. Candidates and campaign committees not separately accounting for contributions pursuant to such Code section shall not accept contributions for any election in an election cycle prior to the conclusion of the immediately preceding election in such cycle; provided, however, that contributions may be accepted for a primary election at any time in the election cycle prior to and including the date of such primary election. Upon conclusion of each election, contributions remaining unexpended may be expended on succeeding elections in the election cycle, and contributions not exceeding the contribution limits of this Code section may continue to be accepted for repayment of campaign obligations incurred as a candidate in that election except as provided in subsection (h) of this Code section.

(e) Candidates and campaign committees shall designate on their disclosure reports the election for which a contribution has been

accepted. Any contribution not so designated shall be presumed to have been accepted for the election on or first following the date of the contribution.

(f) A contribution by a partnership shall be deemed to have been made pro rata by the partners as individuals for purposes of this Code section, as well as by the partnership in toto unless the partnership by proper action under its partnership agreement otherwise directs allocation of the contribution among the partners. At such direction of the partnership, the contribution may be allocated in any proportion among the partners, including to one or some but not all. Such allocation shall be indicated on the face of any instrument constituting the contribution or on an accompanying document referencing such instrument.

(g) The contribution limitations established by this Code section shall not apply to a loan or other contribution made to a campaign committee or candidate by the candidate or a member of the family of the candidate.

(h) Reserved.

(i) The contribution limits established by this Code section shall not apply to a bona fide loan made to a candidate or campaign committee by a state or federally chartered financial institution or a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation if:

(1) Such loan is made in the normal course of business with the expectation on the part of all parties that such loan shall be repaid; and

(2) Such loan is based on the credit worthiness of the candidate and the candidate is personally liable for the repayment of the loan.

(j) The contribution limitations provided for in this Code section shall not include contributions or expenditures made by a political party in support of a party ticket or a group of named candidates.

(k) At the end of each gubernatorial election cycle, the contribution limitations in this Code section shall be raised or lowered in increments of $100.00 by order of the commission pursuant to a consideration by the commission of inflation or deflation during such cycle or four-year period, as determined by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, and such limitations shall apply until next revised by the commission. The commission shall adopt rules and regulations for the implementation of this subsection.

History. Code 1981, § 21-5-41, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 8; Ga. L. 1994, p. 258, § 11; Ga. L. 1995,

p. 8, § 1; Ga. L. 2000, p. 1491, § 4; Ga. L. 2005, p. 859, § 16/HB 48; Ga. L. 2010, p. 1173, § 15/SB 17; Ga. L. 2022, p. 3, § 10/SB 120; Ga. L. 2023, p. 608, § 5/HB 572, effective July 1, 2023.

The 2022 amendment, effective March 2, 2022, rewrote the first sentence of subsection (k), which read: "At the end of the election cycle applicable to each public office as to which campaign contributions are limited by this Code section and every four years for all other elections to which this Code section is applicable, the contribution limitations in this Code section shall be raised or lowered in increments of $100.00 by regulation of the commission pursuant to a determination by the commission of inflation or deflation during such cycle or four-year period, as determined by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, and such limitations shall apply until next revised by the commission."

The 2023 amendment, effective July 1, 2023, substituted "Reserved." for the former provisions of subsection (h), which read: "Any candidate or campaign committee who incurs loans on or after January 9, 2006, in connection with the candidate's campaign for election shall not repay, directly or indirectly, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of the election for which the loan was made to the extent that such loans exceed $250,000.00."

Editor's notes.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by the General Assembly, provides that for purposes of issuing rules and regulations, that Act became effective May 1, 2000.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Administrative rules and regulations.

Adjustment of contribution limits based upon inflation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Organization, § 189-1-.07.

Disclosure reports, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Government Transparency and Campaign Finance Commission, Chapter 189-3.

Law reviews.

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For comment, "Awakening a Slumbering Giant: Georgia's Judicial Selection System After *White* and *Weaver*," see 56 Mercer L. Rev. 1035 (2005).

For article, "An Intersection of Laws: Citizens United v. FEC: Rational Coercion: Citizens United and a Modern Day Prisoner's Dilemma," see 27 Ga. St. U. L. Rev. 1105 (2011).

For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

For article, "SB 221: The Creation of Election Leadership Committees," see 38 Ga. St. U.L. Rev. 155 (2021).

JUDICIAL DECISIONS

Commission decision finding reasonable grounds for violation not immediately appealable. — Candidate had not shown irreparable harm justifying immediate appeal to a superior court under O.C.G.A. § 50-13-19(a) from an interim decision of the Georgia Government Transparency and Campaign Finance

Commission because judicial review would be available after the final decision; the charges had been pending over eight years and alleged damage to the candidate's reputation was not irreparable harm. Oxendine v. Gov't Transparency & Campaign Fin. Comm'n, 341 Ga. App. 901, 802 S.E.2d 310, 2017 Ga. App. LEXIS 304 (2017), cert. denied, No. S17C1925, 2017 Ga. LEXIS 1018 (Ga. Dec. 11, 2017).

OPINIONS OF THE ATTORNEY GENERAL

Campaign contributions prior to January 1, 2001, under the election year/non-election year format should not be counted against the new election cycle contribution limits set forth in the revised version of the statute which became effective on that date. 2001 Op. Att'y Gen. No. 2001-4.

Term "immediate family" in the campaign contributions portion of the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq., refers to a candidate's spouse and children. 1995 Op. Att'y Gen. No. 95-42.

Loan made to candidate in ordinary course of business. — A loan made to a candidate for public office, which is made in the ordinary course of business and not for the purpose of influencing the nomination or election of the candidate, is not subject to the monetary limitations on contributions contained in the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq.; any other type of loan, including one guaranteed by individuals other than the candidate, would be subject to that Act's limitation on contributions. 1992 Op. Att'y Gen. No. 92-26 (Subsection (c) codifies the conclusion and broadens the dollar limit exclusion to include contributions from candidate's family).

Adjustment of contribution limits. — Georgia Government Transparency and Campaign Finance Commission's existing rule that requires the contribution limits be adjusted every calendar year is in line with the requirement of contribution limits being adjusted "at the end of the election cycle," under O.C.G.A. § 21-5-41(k), since some election cycles end every calendar year. 2020 Op. Att'y Gen. 20-3.

While the Georgia Government Transparency and Campaign Finance Commission's rule permits the revisiting of setting contribution limits if the Commission fails to timely adjust the contribution limits at its first regularly scheduled meeting of the year, the language of the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq., does not allow the Commission to revisit an affirmative vote that raises, lowers, or rejects an adjustment to contribution limits. Such an affirmative vote of the Commission locks the adjusted contribution limits into place for the duration of that election cycle. 2020 Op. Att'y Gen. 20-3.

When adjustments should occur. — Adjustment of a contribution limit should occur as close as practically possible to the end of an election cycle or every four years to avoid changes to limits during any subsequent election cycle. 2020 Op. Att'y Gen. 20-3.

Who may adjust contribution limits. — The Georgia Government Transparency and Campaign Finance Commission, and not its staff, is the regulatory body under Georgia law granted the discretionary ability to determine whether and to what extent to adjust contribution limits. There is no express grant of authority by the General Assembly that would permit the delegation of this discretionary duty to Commission staff. Therefore, only the Commission, not the staff, can alter contribution limits pursuant to the discretionary authority granted to the Commission by statute. 2020 Op. Att'y Gen. 20-3.

Frequency of setting contribution limits. — For an office with a four-year term, a candidate may appear on the ballot several times during that period. The limits applicable to the primary, primary run-off, general, and general run-off, which will each occur at most once during that four year period, will be the limits set by the Commission at the conclusion of the last election cycle concluding with a general election or, if applicable, the general election run-off. Any special election, special election run-off, and recall election shall be governed by the contribution limits set once every four years by the Com-

mission for all offices as to those types of elections. 2020 Op. Att'y Gen. 20-3.

RESEARCH REFERENCES

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Construction and application of Supreme Court's holding in *Citizens United v. Federal Election Com'n,* 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), that government may not prohibit independent and indirect corporate expenditures on political speech, 65 A.L.R.6th 503.

21-5-42. Contribution to campaign committee deemed contribution to candidate; rules for construction.

For purposes of this article, a contribution to a campaign committee of a candidate for any public office shall be deemed to be a contribution to such candidate. If during any calendar year there occur both a special election including a special primary, special primary runoff, and special election runoff as appropriate and a general election for the same public office and if the same person is a candidate for nomination or election at both such special election including a special primary, special primary runoff, and special election runoff as appropriate and such general election, then this Code section shall apply. Where this Code section applies, a person, corporation, political committee, or political party may contribute up to the maximum amount otherwise allowable under this article to such person or such person's campaign committee for the purpose of influencing such candidate's nomination or election at the special primary, special primary runoff, special election, or special election runoff; and the same person, corporation, political committee, or political party may contribute up to the maximum amount otherwise allowable under this article for the purpose of influencing such candidate's election at the general election or general election runoff. This Code section shall be construed according to the following rules:

(1) It is the general intent of this Code section to allow a person who is a candidate for election at both a special election and a general election in the same calendar year to receive up to but no more than twice the amount of contributions which could otherwise be received from any one donor during the year; and

(2) Seeking nomination at a special primary or general primary shall be considered as seeking election at the ensuing special election or general election for the purpose of determining whether a person is a candidate for election at both the special election and the general election and allowing the application of this Code section; but seeking election at only a single primary and its ensuing election shall not bring this Code section into effect.

History.

Code 1981, § 21-5-44, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 12; Ga. L. 1994, p. 258, § 11; Code Section 21-5-42, as redesignated by Ga. L. 2000, p. 1491, § 4.

Editor's notes.

Ga. L. 2000, p. 1491, § 4, effective January 1, 2001, redesignated the provisions of former Code Section 21-5-44 as this Code section. Former Code Section 21-5-42, concerning the maximum allowable contribution by corporations, was based on Code 1981, § 21-5-42, enacted by Ga. L. 1990, p. 922, § 6, Ga. L. 1992, p. 1075, § 9, Ga. L. 1994, p. 258, § 11.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by the General Assembly, provides that for purposes of issuing rules and regulations that Act became effective May 1, 2000.

Law reviews.

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

21-5-43. Accounting for and expenditure of campaign contributions.

(a)(1) A candidate or campaign committee may separately account for contributions for each election in an election cycle for which contributions are accepted. If no contributions are accepted for an election, no corresponding accounting shall be required. Subject to the contribution limits of this chapter, contributions so separately accounted for may be accepted at any time in the election cycle. Upon the conclusion of each election, contributions not exceeding such limits may continue to be accepted for repayment of campaign obligations incurred as a candidate in that election.

(2) A candidate who wishes to accept contributions for more than one election at a time shall separately account for such campaign contributions and shall file an "Option to Choose Separate Accounting" form with the commission prior to accepting contributions for any election other than the candidate's next upcoming election; provided, however, that a candidate shall only be required to file one such form which shall be utilized for all subsequent elections to the same elective office, regardless of whether an election occurs in a new election cycle.

(3) A candidate who accepts contributions for more than one election at a time may allocate contributions received from a single contributor to any election in the election cycle, provided that the contributions shall not violate maximum allowable contribution limits for any election; provided, however, that in order to allocate contributions to a past election, the candidate shall have outstanding campaign debt from the previous election.

(b) Contributions separately accounted for shall not be expended on a prior election except in conformance with this Code section. Contributions separately accounted for in a primary election may be expended at any time during the election cycle prior to and including the date of the primary.

(c) Contributions remaining unexpended after the date of an election in which the candidate does appear on the ballot may be expended for any future election in the same election cycle without regard to the limitations of Code Section 21-5-41. If there are no further elections in the election cycle or if the candidate or the candidate of the campaign committee is not on the ballot of a further election in the election cycle, any remaining contributions may be used only as provided in Code Section 21-5-33.

(d) Contributions accepted and separately accounted for in an election in which the candidate does not appear on the ballot, if unexpended, shall be returned to the contributors thereof pro rata without interest. Any portion thereof which cannot be returned to the original contributor thereof shall be expended only as provided in Code Section 21-5-33.

(e) For purposes of separate accounting, a candidate shall be deemed to have advanced to the next election in the election cycle upon the official certification of the election result by the Secretary of State, or upon the concession of the candidate's election opponents, or upon receiving a preliminary consolidated election return of 50 percent plus one for advancement to a general election, or upon receiving a preliminary consolidated election return of 50 percent or less for a runoff election and placing in one of the two spots that will advance to the runoff election, whichever event shall first occur. In the event that the official certification of the election result by the Secretary of State differs from or is in conflict with a preliminary consolidated election return for advancement to a general or runoff election, the official certification of the election result by the Secretary of State shall control for purposes of this Code section.

(f) The commission shall adopt such rules and regulations as are necessary to carry out the purposes of this Code section in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.

Code 1981, § 21-5-43, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 10; Ga. L. 1994, p. 258, § 11; Ga. L. 2000, p. 1491, § 4; Ga. L. 2005, p. 859, § 17/HB 48; Ga. L. 2022, p. 3, § 11/SB 120.

The 2022 amendment, effective March 2, 2022, in subsection (c), substituted "the date of an election in which the candidate does appear on the ballot may" for "the date of the election may" in the first sentence, and substituted "any remaining contributions" for "such contributions" in the second sentence; in subsection (d), substituted "election in which the candidate does not appear on the ballot" for "election which does not occur or for which the candidate does not qualify" in the first sentence; added present subsection (e) and redesignated former subsection (e) as present subsection (f).

Editor's notes.

Ga. L. 2000, p. 1491, § 5, not codified by the General Assembly, provides for severability.

Ga. L. 2000, p. 1491, § 6, not codified by

the General Assembly, provides that for purposes of issuing rules and regulations, that Act became effective May 1, 2000.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

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Applicability to labor organizations. — O.C.G.A. § 21-5-43 limits local labor unions which are "established, financed, maintained, or controlled" by the same labor organization to making contributions for any one candidate not to exceed the total aggregate maximum contribution provided for in that Code section; whether any such local unions are deemed to be so affiliated with one labor organization is a question to be determined on a case by case basis. 1994 Op. Att'y Gen. No. 94-16.

Monetary contributions. — A candidate for public office may receive monetary campaign contributions for an election, and throughout each of the applicable elections for that particular public office's cycle, whichever elections actually occur and for which the candidate is actually on the ballot. An individual may only contribute up to the maximum contribution limit to that candidate for that particular election. 2020 Op. Att'y Gen. 20-3.

21-5-43.1. [Repealed] Maximum allowable contribution by political parties.

History.

Code 1981, § 21-5-43.1, enacted by Ga. L. 1992, p. 1075, § 11; Ga. L. 1994, p. 258, § 11; repealed by Ga. L. 2000, p. 1491, § 4, effective January 1, 2001.

21-5-44. [Redesignated] Contribution to campaign committee deemed contribution to candidate; rules for construction.

Editor's notes.

Ga. L. 2000, p. 1491, § 4, effective January 1, 2001, redesignated the former provisions of this Code section as Code Section 21-5-42.

21-5-45. [Repealed] Limitations on contributions apply separately to each election.

History.

Code 1981, Code Section 21-5-45, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 13; repealed by Ga. L. 1994, p. 258, § 11, effective March 25, 1994.

ARTICLE 3

FINANCIAL DISCLOSURE STATEMENTS

21-5-50. Filing by public officers; filing by candidates for public office; filing by elected officials and members of the General Assembly; electronic filing.

(a)(1) Except as modified in subsection (c) of this Code section with respect to candidates for state-wide elected public office, each public officer, as defined in subparagraphs (A) through (D) of paragraph (22) of Code Section 21-5-3, shall file with the commission not before the first day of January nor later than July 1 of each year in which such public officer holds office other than an election year a financial disclosure statement for the preceding calendar year; and each person who qualifies as a candidate for election as a public officer, as defined in subparagraphs (A) through (D) of paragraph (22) of Code Section 21-5-3, shall file with the commission, no later than the fifteenth day following the date of qualifying as a candidate, a financial disclosure statement for the preceding calendar year.

(2) Except as set forth in paragraph (3) of this subsection, a public officer, as defined in subparagraph (E) of paragraph (22) of Code Section 21-5-3, shall not be required to file a financial disclosure statement pursuant to this Code section. Each such public officer shall, however, be deemed to be a public official for purposes of Code Section 45-10-26 and shall be subject to the disclosure requirements set forth in Code Section 45-10-26. In addition, each such public officer shall file with the commission, prior to January 31 each year, an affidavit confirming that such public officer took no official action in the previous calendar year that had a material effect on such public officer's private financial or business interests; provided, however, that, if a public officer as defined in subparagraph (E) of paragraph (22) of Code Section 21-5-3 has previously filed or is subject to filing a financial disclosure statement with the commission pursuant to this paragraph, and said financial disclosure statement covers the same calendar year as would be covered by the affidavit required by this Code section, the public officer shall be exempted from filing an affidavit. No retired judge or senior judge of any court of this state shall be required to file an affidavit pursuant to this Code section.

(3) A public officer, as defined in subparagraph (E) of paragraph (22) of Code Section 21-5-3, who serves as a member of the commission shall be subject to the requirements for filing financial disclosure statements set forth in paragraph (1) of this subsection. In addition, each such public officer shall file with the commission, together with

the financial disclosure statement, an affidavit confirming that such public officer took no official action in the previous calendar year that had a material effect on such public officer's private financial or business interests.

(3.1) A public officer and candidates for election as a public officer, as defined in subparagraphs (F) and (G) of paragraph (22) of Code Section 21-5-3, shall make filings of the same kind and in the same manner as provided in paragraph (1) of this subsection for other public officers and candidates for election as a public officer except that filings under this paragraph shall be made with the election superintendent of the county in the case of public officers and candidates for election as a public officer as defined in said subparagraph (F) and shall be made with the municipal clerk in the municipality of election or, if there is no clerk, with the chief executive officer of the municipality in the case of public officers as defined in said subparagraph (G). The election superintendent, municipal clerk, or chief executive officer, as applicable, shall transmit, electronically by eFiling or eFax, a copy of each such report to the commission not later than 30 days after the close of the reporting period. No fine, fee, or sanction, including but not limited to identifying a public officer or candidate for election as a public officer as having filed late or failed to file, shall be imposed by the commission on the public officer or candidate for election as a public officer for the failure of the election superintendent, municipal clerk, or chief executive officer to timely transmit a copy of such report.

(4) Each member of the State Transportation Board shall file a financial disclosure statement for the preceding calendar year no later than the sixtieth day following such member's election to the State Transportation Board. Thereafter, each board member shall file by January 31 of each year a financial disclosure statement for the preceding year. In addition, each board member shall file with the commission, prior to January 31 of each year, an affidavit confirming that such board member took no official action in the previous calendar year that had a material effect on such board member's private financial or business interests.

(5) The commission or the applicable official under paragraph (3.1) of this subsection shall review each financial disclosure statement to determine that such statement is in compliance with the requirements of this chapter.

(6) A public officer shall not, however, be required to file such a financial disclosure statement for the preceding calendar year in an election year if such public officer does not qualify for nomination for election to succeed himself or herself or for election to any other public office subject to this chapter. For purposes of this paragraph, a

public officer shall not be deemed to hold office in a year in which the public officer holds office for fewer than 15 days.

(b) A financial disclosure statement shall be in the form specified by the commission and shall identify:

(1) Each monetary fee or honorarium which is accepted by a filer from speaking engagements, participation in seminars, discussion panels, or other activities which directly relate to the official duties of the filer or the office of the public officer, with a statement identifying the fee or honorarium accepted and the person from whom it was accepted;

(2) All fiduciary positions held by the candidate for public office or the filer, with a statement of the title of each such position, the name and address of the business entity, and the principal activity of the business entity;

(3) The name, address, and principal activity of any business entity or investment, exclusive of the names of individual stocks and bonds in mutual funds, and the office held by and the duties of the candidate for public office or filer within such business entity as of December 31 of the covered year in which such candidate or officer has a direct ownership interest which:

(A) Is more than 5 percent of the total interests in such business; or

(B) Has a net fair market value of $5,000.00 or more;

(4)(A) Each tract of real property in which the candidate for public office or filer has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value of $5,000.00 or more. As used in this paragraph, the term "fair market" value means the appraised value of the property for ad valorem tax purposes. The disclosure shall contain the county and state, general description of the property, and whether the fair market value is between (i) $5,000.00 and $100,000.00; (ii) $100,000.01 and $200,000.00; or (iii) more than $200,000.00.

(B) Each tract of real property in which the candidate for public office's spouse or filer's spouse has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value of $5,000.00 or more. The disclosure shall contain the county and state, general description of the property, and whether the fair market value is between (i) $5,000.00 and $100,000.00; (ii) $100,000.01 to $200,000.00; (iii) or more than $200,000.00;

(5) The filer's occupation, employer, and the principal activity and address of such employer;

(6) The filer's spouse's name, occupation, employer, and the principal activity and address of such employer;

(7) If the filer has actual knowledge of such ownership interest, the name of any business or subsidiary thereof or investment, exclusive of the individual stocks, bonds, or mutual funds, as of December 31 of the covered year in which the filer's spouse or dependent children, jointly or severally, own a direct ownership interest which:

(A) Is more than 5 percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

(B) Has a net fair market value of more than $10,000.00

or in which the filer's spouse or any dependent child serves as an officer, director, equitable partner, or trustee; and

(8)(A) As used in this paragraph, the term "agency" has the meaning provided by Code Section 45-10-20.

(B) All annual payments in excess of $10,000.00 received by the filer or any business entity identified in paragraph (3) of this subsection from the state, any agency, department, commission, or authority created by the state, and authorized and exempted from disclosure under Code Section 45-10-25, and the agency, department, commission, or authority making the payments, and the general nature of the consideration rendered for the source of the payments. This paragraph shall not require the disclosure of payments which have already been disclosed for purposes of any other provision of this chapter.

(c)(1) Each person who qualifies with a political party as a candidate for party nomination to a public office elected state wide (including an incumbent public officer elected state wide qualifying to succeed himself or herself) shall file with the commission, not later than seven days after so qualifying, a financial disclosure statement. Each person who qualifies as a candidate for election to a public office elected state wide through a nomination petition or convention shall likewise file a financial disclosure statement not later than seven days after filing his or her notice of candidacy. Such financial disclosure statement shall comply with the requirements of subsections (a) and (b) of this Code section and shall in addition identify, for the preceding five calendar years:

(A) Each transaction or transactions which aggregate $9,000.00 or more in a calendar year in which the candidate (whether for himself or herself or on behalf of any business) or any business in which such candidate or any member of his or her

family has a substantial interest or is an officer of such business has transacted business with the government of the State of Georgia, the government of any political subdivision of the State of Georgia, or any agency of any such government; and

(B) Each transaction or transactions which aggregate $9,000.00 or more in a calendar year in which the candidate or any business in which such candidate or any member of his or her family has a substantial interest or is an officer of such business received any income of any nature from any person who was at the time of such receipt of income represented by a lobbyist registered with the commission pursuant to Article 4 of this chapter.

(2) The financial disclosure statement required by paragraph (1) of this subsection shall include an itemized list of the transactions required to be reported, including the date of, dollar amount of, and parties to each such transaction. However, with respect to any transactions of a privileged nature only the total amount of such transactions shall be required to be reported, and names, dates, amounts of individual transactions, and other identifying data may be omitted; and for this purpose "transactions of a privileged nature" shall include transactions between attorney and client, transactions between psychiatrist and patient, transactions between physician and patient, and any other transactions which are by law of a similar privileged and confidential nature.

(3) The financial disclosure statement required by paragraph (1) of this subsection shall be accompanied by a financial statement of the candidate's financial affairs for the five calendar years prior to the year in which the election is held and the first quarter of the calendar year in which the election is held.

(3.1) The financial disclosure statement required by paragraph (1) of this subsection shall include the source or sources of the candidate's income for the five calendar years prior to the year in which the election is held and the first quarter of the calendar year in which the election is held.

(4) As used in this subsection, the term:

(A) "Agency" means any agency, authority, department, board, bureau, commission, committee, office, or instrumentality of the State of Georgia or any political subdivision of the State of Georgia.

(B) "Financial statement" means a statement of a candidate's financial affairs in a form substantially equivalent to the short form financial statement required for bank directors under the rules of the Department of Banking and Finance.

(C) "Person" and "transact business" shall have the meanings specified in Code Section 45-10-20.

(D) "Substantial interest" means the direct or indirect ownership of 10 percent or more of the assets or stock of any business.

(5) Notwithstanding any other provisions of this subsection, if, due to a special election or otherwise, a person does not qualify as a candidate for nomination or election to public office until after the filing date otherwise applicable, such person shall make the filings required by this subsection within seven days after so qualifying.

(d) All state-wide elected officials and members of the General Assembly shall file financial disclosure statements electronically with the commission. Local officials referred to in subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3 may file electronically if such method is made available or may file by certified mail, statutory overnight delivery, or personal delivery.

(e) The filing of any financial disclosure statement required under this article shall constitute an affirmation that the statement is true, complete, and correct.

(f)(1) In addition to other penalties provided in this chapter, a late fee of $125.00 shall be imposed by the person or entity with which filing is required for each financial disclosure statement that is filed late, and notice of such late fee shall be sent to the board member, candidate, and the candidate's committee in the same manner by which the penalized report was filed with the commission. However, if the report in question was not filed or was filed with the commission in a manner other than electronic filing or certified mail, return receipt requested, the commission shall use certified mail, return receipt requested, to notify the candidate and the candidate's committee of the late fee due. The notice shall include the schedule of increasing late fees for late filings and the dates upon which such late fees shall be increased. In addition, a late fee of $250.00 shall be imposed on the fifteenth day after the due date for such statement if such statement has not been filed. A late fee of $1,000.00 shall be imposed on the forty-fifth day after the due date for such statement if the statement has not been filed. Campaign committee funds shall not be used to pay such penalty. Notice by electronic means shall not satisfy the requirements of this paragraph; and any increased late fees shall be stayed until at least ten days after proper notice has been given as specified in this paragraph.

(2) The commission shall retain $25.00 of the first late fee received by the commission for processing pursuant to the provisions of Code Section 45-12-92.1.

(g) Notwithstanding any other provision of this chapter to the

contrary, soil and water conservation district supervisors elected pursuant to Article 2 of Chapter 6 of Title 2 shall not be required to file personal financial disclosure statements under this Code section.

History.

Code 1981, § 21-5-50, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, §§ 13, 14; Ga. L. 1988, p. 603, § 6; Ga. L. 1989, p. 10, § 1; Ga. L. 1990, p. 922, §§ 7, 8; Ga. L. 1992, p. 56, § 1; Ga. L. 1992, p. 1075, §§ 14, 15; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 258, § 12; Ga. L. 2005, p. 859, § 18/HB 48; Ga. L. 2009, p. 620, § 5/SB 168; Ga. L. 2010, p. 9, § 1-48/HB 1055; Ga. L. 2010, p. 1173, § 16/SB 17; Ga. L. 2011, p. 19, § 6/HB 232; Ga. L. 2013, p. 173, § 6/HB 143; Ga. L. 2013, p. 540, § 4/HB 142; Ga. L. 2016, p. 173, § 8/SB 199; Ga. L. 2020, p. 493, § 21/SB 429; Ga. L. 2022, p. 3, § 12/SB 120; Ga. L. 2023, p. 608, § 6/HB 572, effective July 1, 2023.

The 2022 amendment, effective March 2, 2022, in subsection (a), added the proviso at the end of paragraph (a)(2), and, in paragraph (a)(3.1), inserted "and candidates for election as a public officer" in three places in the first sentence and inserted "or candidate for election as a public officer" twice in the third sentence; in subsection (c), substituted "the five calendar years prior" for "the calendar year prior" in paragraph (c)(3) and added paragraph (c)(3.1); and added subsection (g).

The 2023 amendment, effective July 1, 2023, in paragraph (a)(2), in the third sentence, inserted a comma following "however, that" and inserted "or is subject to filing", and added the last sentence; and, in subsection (d), deleted the last sentence, which read: "Except when electronic filing is required, the mailing of the notarized financial disclosure statement by United States mail with adequate postage affixed within the required filing time as determined by the official United States postage date cancellation shall be prima-facie evidence of filing."

Code Commission notes.

The amendment of this Code section by Ga. L. 2010, p. 9, § 1-48/HB 1055, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1173, § 16/SB 17. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-3, in 2013, the amendment of subsection (g) of this Code section by Ga. L. 2013, p. 173, § 6/HB 143, was treated as impliedly repealed and superseded by Ga. L. 2013, p. 540, § 4/HB 142, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974) and Ga. L. 2013, p. 141, § 54(d)/HB 79.

Pursuant to Code Section 28-9-5, in 2022, "this paragraph" was substituted for "paragraph (2) of subsection (a) of Code Section 21-5-50" in paragraph (a)(2).

Editor's notes.

Ga. L. 1993, p. 118, § 1 which amended this Code section, contained an incorrect reference to Code Section 21-2-50. The correct reference was to Code Section 21-5-50 (this Code section).

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part: "This Act shall become effective on January 10, 2011, and shall apply to all reports filed on and after such date; provided, however, that if Code Section 45-12-92.1 as enacted by HB 1055 at the regular session of the 2010 General Assembly does not become law, then the following provisions as enacted by this Act shall not become effective and shall be reserved instead: paragraph (2) of subsection (k) of Code Section 21-5-34; paragraph (2) of subsection (f) of Code Section 21-5-50; division (f)(2)(D)(ii) of Code Section 21-5-71; and division (f)(2)(E)(ii) of Code Section 21-5-71." HB 1055 became effective May 12, 2010.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Ga. L. 2022, p. 3, § 12/SB 120, purported to amend subsection (g) but actually enacted a new subsection (g).

Law reviews.

For article, "Georgia Campaign Finance and Disclosure Law," see 27 Ga. St. B. J. 175 (1991).

For note on the 1992 amendments of this Code section, see 9 Ga. St. U. L. Rev. 247 (1992).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under the former chapter are included in the annotations for this Code section.

Provisions applicable to candidates not contributors. — The provisions of former § 21-5-5.1 applied only to candidates for state-wide office and did not apply to persons who accept contributions for, make contributions to, or make expenditures on behalf of candidates. 1985 Op. Att'y Gen. No. 85-61 (opinion decided under provisions of former Code Section 21-5-5.1 similar to this Code section).

Filing required of public officers seeking reelection. — A public officer who is seeking reelection, and who has already filed an annual public officer financial disclosure statement, is required to complete the two sections of the form pertaining solely to public officers at the time that the officer intends to qualify for reelection. 1987 Op. Att'y Gen. No. 87-26.

Officers require to file disclosure reports. — Executive directors and members of state examining boards, as well as other public officers defined in O.C.G.A. § 21-5-3(15), must file financial disclosure reports required under the Financial Disclosure Act, O.C.G.A. T. 21, Ch. 5. 1997 Op. Att'y Gen. No. 97-18.

Identifying persons not filing timely financial disclosure statements. — For duty, prior to 1988 amendment to O.C.G.A. § 21-5-53, to identify candidates or public officers who have not timely filed their financial disclosure statements, see 1987 Op. Att'y Gen. No. 87-26.

Disclosure of direct ownership by candidate or public officer. — O.C.G.A. § 21-5-50(b)(3), as amended in 1988, does not require the disclosure of the amount of direct ownership a candidate or public officer owns in a business entity. 1988 Op. Att'y Gen. No. 88-22.

Disclosure of a public officer's direct ownership interest in real property is required pursuant to O.C.G.A. § 21-5-50(b)(4) if the net fair market value of the interest exceeds $20,000.00 as of December 31 of a covered year. 2000 Op. Atty. Gen. No. U2000-10.

Interest in corporately owned real estate. — A public officer or candidate, who owns more than 10% or $20,000 interest in a corporation, must disclose an interest in corporately owned real estate only if the officer has a legally enforceable right to use the land for personal enjoyment or profit and the officer's interest therein has a fair market value of more than $20,000. 1998 Op. Att'y Gen. No. 98-7.

Candidates for election to statewide judicial office are not required to file the expanded financial disclosure forms outlined in O.C.G.A. § 21-5-50(c). 1996 Op. Att'y Gen. No. 96-9.

O.C.G.A. § 45-10-25 must be construed in tandem with O.C.G.A. § 21-5-50(b)(5) and because salary, expense reimbursements, and per diem payments are not payments which are authorized and exempted from disclosure under § 45-10-25, paragraph (b)(5) does not require that these payments be included on the financial disclosure statement filed pursu-

ant to § 21-5-50(a). 1989 Op. Att'y Gen. No. 89-23.

Use of a "blind trust" does not limit the information required to be disclosed in a public officer's financial disclosure statement; individual assets and interests held in a "blind trust" must be disclosed to the extent they are otherwise subject to provisions of the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq. 2000 Op. Att'y Gen. No. 2000-6.

Private Colleges and Universities Authority is not a "state authority" for purposes of the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq., and, therefore, its members need not file the disclosure forms required by O.C.G.A. § 21-5-50. 1999 Op. Att'y Gen. No. 99-5.

21-5-51. Inspection and copying of financial disclosure statements.

Financial disclosure statements filed pursuant to this article shall be public records and shall be subject to inspection and copying by any member of the public as provided by law for other public records.

History.

Code 1981, § 21-5-51, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 15; Ga. L. 2009, p. 620, § 6/SB 168; Ga. L. 2010, p. 1173, § 17/SB 17.

Editor's notes.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

21-5-52. [Repealed] Filing by mail.

History.

Code 1981, § 21-5-52, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 16; Ga. L. 2005, p. 859, § 19/HB 48; Ga. L. 2009, p. 620, § 6/SB 168; repealed by Ga. L. 2010, p. 1173, § 18/SB 17, effective January 10, 2011.

Editor's notes.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the repeal of this Code section applies to all reports filed on and after January 10, 2011.

21-5-53. [Repealed] Public record.

History.

Code 1981, § 21-5-53, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 17; Ga. L. 1988, p. 603, § 7; repealed by Ga. L. 2010, p. 1173, § 19/SB 17, effective January 10, 2011.

ARTICLE 4

PUBLIC OFFICIALS' CONDUCT AND LOBBYIST DISCLOSURE

Law reviews.

For article, "Lobbying in the Shadows: Religious Interest Groups in the Legislative Process," see 64 Emory L.J. 1041 (2015).

21-5-70. Definitions.

As used in this article, the term:

(1) "Expenditure":

(A) Means a purchase, payment, distribution, loan, advance, deposit, or conveyance of money or anything of value made for the purpose of influencing the actions of any public officer, specifically including any such transaction which is made on behalf of or for the benefit of a public employee for the purpose of influencing a public officer;

(B) Includes any other form of payment when such can be reasonably construed as designed to encourage or influence a public officer;

(B.1) Includes reimbursement or payment of expenses exceeding $75.00 provided to a public officer from any individual lobbyist for transportation, travel, lodging, registration, food, and beverages;

(C) Includes any gratuitous transfer, payment, subscription, advance, or deposit of money, services, tickets for admission to athletic, sporting, recreational, musical concert, or other entertainment events, or anything of value, unless consideration of equal or greater than face value is received;

(D) Includes reimbursement or payment of expenses for recreational or leisure activities; and

(E) Does not include anything defined in paragraph (4.1) of this Code section as a lobbying expenditure, the provisions of subparagraphs (A) through (D) of this paragraph notwithstanding.

(2) "Filed" means the delivery to the commission, as specified in this article, of a document that satisfies the requirements of this article. A document is considered delivered when it is electronically delivered to the commission or placed in the United States mail within the required filing time, properly addressed to the commission, as specified in this article, with adequate postage affixed.

(3) "Identifiable group of public officers" means a description that is specifically determinable by available public records.

(4) "Lobbying" means the activity of a lobbyist while acting in that capacity.

(4.1) "Lobbying expenditure" means:

(A) Promotional items generally distributed to the general public or to public officers and food and beverages produced in Georgia;

(B) An award, plaque, certificate, memento, or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service;

(C) Discounts, upgrades, memberships, or other accommodations extended by a business to a bona fide customer; or legitimate salary, benefits, fees, commissions, or expenses associated with a recipient's nonpublic business, employment, trade, or profession;

(D) Food, beverages, and registration at group events to which all members of an agency, as defined in paragraph (1) of subsection (a) of Code Section 21-5-30.2, are invited. For purposes of this subparagraph, an agency shall also include the House of Representatives, the Senate, standing committees of such bodies but not for more than one of such group events per committee per calendar year, caucuses of members of the majority or minority political parties of the House or Senate, other caucuses of the House or Senate as approved by the House Committee on Ethics or the Senate Ethics Committee, and the governing body of each political subdivision of this state;

(E) Campaign contributions or expenditures as defined by Code Section 21-5-3 and reported as required by Article 2 of this chapter;

(F) Reimbursement or payment of actual and reasonable expenses provided to a public officer and his or her necessary public employee staff members for such public officer's and staff members' individual transportation, lodging, travel, and registration for attending educational, informational, charitable, or civic meetings or conferences that are held at locations within the United States and directly relate to the official duties of that public officer or the office of that public officer, plus food and beverages for such public officer, his or her necessary public employee staff members, and spouse while attending such educational, informational, charitable, or civic meetings or conferences;

(G) Anything which:

(i) Does not qualify as a lobbying expenditure under subparagraphs (A) through (F) of this paragraph; and

(ii) Would qualify as an expenditure under subparagraph (B.1)

of paragraph (1) of this Code section except that it does not exceed an amount or value of $75.00 per person.

(5) "Lobbyist" means:

(A) Any natural person who, either individually or as an employee of another person, receives or anticipates receiving more than $250.00 per calendar year in compensation or reimbursement or payment of expenses specifically for undertaking to promote or oppose the passage of any legislation by the General Assembly, or any committee of either chamber or a joint committee thereof, or the approval or veto of legislation by the Governor;

(B) Any natural person who makes a lobbying expenditure of more than $1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose the passage of any legislation by the General Assembly, or any committee of either chamber or a joint committee thereof, or the approval or veto of legislation by the Governor;

(C) Reserved;

(D) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose the passage of any ordinance or resolution by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;

(E) Any natural person who makes a lobbying expenditure of more than $1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose the passage of any ordinance or resolution by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;

(F) Any natural person who as an employee of local government engages in any activity covered under subparagraph (D) of this paragraph;

(G) Any natural person who, for compensation, either individually or as an employee of another person, is hired specifically to undertake influencing a public officer or state agency in the selection of a vendor to supply any goods or services to any state agency but does not include any employee or independent contractor of the vendor solely on the basis that such employee or independent contractor participates in soliciting a bid or in

preparing a written bid, written proposal, or other document relating to a potential sale to a state agency and shall not include a bona fide salesperson who sells to or contracts with a state agency for goods or services and who does not otherwise engage in activities described in subparagraphs (A) through (F) or (H) through (I) of this paragraph;

(H) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose the passage of any rule or regulation of any state agency;

(I) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose any matter before the State Transportation Board; or

(J) Any natural person who makes a lobbying expenditure of more than $1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose any matter before the State Transportation Board.

(6) "Public officer" means a member of the State Transportation Board and those public officers specified under paragraph (22) of Code Section 21-5-3, except as otherwise provided in this article and also includes any public officer or employee who has any discretionary authority over, or is a member of a public body which has any discretionary authority over, the selection of a vendor to supply any goods or services to any state agency.

(7) "State agency" means any branch of state government or any agency, authority, department, board, bureau, commission, council, corporation, entity, or instrumentality of this state or of a local political subdivision of this state.

(8) "Vendor" means any person who sells to or contracts with any state agency for the provision of any goods or services.

History.

Code 1981, § 21-5-70, enacted by Ga. L. 1992, p. 1075, § 16; Ga. L. 1994, p. 258, § 13; Ga. L. 1994, p. 277, § 1; Ga. L. 1996, p. 26, § 1; Ga. L. 2005, p. 859, § 20/HB 48; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2009, p. 41, § 1/SB 47; Ga. L. 2010, p. 1173, § 20/SB 17; Ga. L. 2011, p. 19, § 7/HB 232; Ga. L. 2011, p. 569, § 3/SB 160; Ga. L. 2013, p. 540, § 2/HB 142; Ga. L. 2016, p. 173, §§ 9, 10/SB 199.

Cross references.

Prohibition against contributions by corporations for purpose of influencing vote, judgment, or action of officer of state, § 14-5-6.

Bribery of state officials, § 16-10-2.

Criminal penalty for action by public officer or employee who asks for or receives thing of value in return for agreement to seek passage or defeat of legislation, §§ 16-10-4, 16-10-5.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Administrative rules and regulations.

Vendor relationships, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Administration, Chapter 111-1-2.

Law reviews.

For article discussing the weaknesses in Georgia statutes prohibiting lobbying, and the effect of such law on lawyers, see 5 Mercer L. Rev. 311 (1954).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U. L. Rev. 193 (1994).

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 28-7-1 are included in the annotations for this Code section.

Overcoming judgment of legislator by favors and promises proscribed. — The definition of lobbying which proscribed only contact "not addressed solely to the judgment" of a member of the General Assembly meant activity aimed at overcoming the independent judgment of a legislator through favors, promises, and the like, rather than honest attempts to persuade the legislator to adopt a specific point of view in the exercise of the legislator's independent judgment. Peacock v. Georgia Mun. Ass'n, 247 Ga. 740, 279 S.E.2d 434, 1981 Ga. LEXIS 851 (1981) (decided under former § 28-7-1).

Political subdivision not to spend tax moneys to influence voters. — The expenditure of tax moneys by a political subdivision to influence the citizens and voters of that political subdivision was far different from the expenditure of tax moneys to inform and influence the General Assembly on behalf of these citizens and voters in regard to issues involving the respective political subdivision; the expenditure by a political subdivision of public money to influence the citizens and voters of the entity contained within it the possibility of the corrupt use of influence to perpetuate a local administrator's power. Peacock v. Georgia Mun. Ass'n, 247 Ga. 740, 279 S.E.2d 434, 1981 Ga. LEXIS 851 (1981) (decided under former § 28-7-1).

OPINIONS OF THE ATTORNEY GENERAL

Persons required to comply with act. — Persons who fall within the definition of a lobbyist in relation to county or municipal matters, as defined under O.C.G.A. § 21-5-70(6)(D), (E), and (F), must comply with the registration and

reporting requirements of the Public Officials Conduct and Lobbyist Disclosure Act, O.C.G.A. § 21-5-70 et seq. 1995 Op. Att'y Gen. No. U95-2.

Compensated officers of unions and business organizations. — Compensated officers of unions or business organizations who express their opinions on proposed or pending legislation to members of the General Assembly on behalf of such entities must register as lobbyists in accordance with the Public Officials Conduct and Lobbyist Disclosure Act of 1992, O.C.G.A. § 21-5-70 et seq. 1993 Op. Att'y Gen. No. U93-2.

Member of State Ethics Commission. — So long as a member of the State Ethics Commission who is an attorney refrains from lobbying, lawyers and others affiliated with the member's law firm may, depending upon the particular facts and circumstances of each case, engage in lobbying without affecting the member's service. 2002 Op. Att'y Gen. No. 2002-4.

RESEARCH REFERENCES

Am. Jur. 2d.

51 Am. Jur. 2d, Lobbying, § 1 et seq.

C.J.S.

16B C.J.S., Constitutional Law, § 1107 et seq.

ALR.

Validity of lobbying contracts, 67 A.L.R. 684.

Validity and construction of state and municipal enactments regulating lobbying, 42 A.L.R.3d 1046.

Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts, 35 A.L.R.6th 1.

21-5-71. Registration required; application for registration; supplemental registration; expiration; docket; fees; identification cards; public rosters; exemptions.

(a)(1) Subject to paragraph (2) of this subsection and except as otherwise provided by subsection (i) of this Code section, no person shall engage in lobbying as defined by this article unless such person is registered with the commission as a lobbyist. The commission shall not allow a person who has been convicted of a felony involving moral turpitude in the courts of this state or an offense that, had it occurred in this state, would constitute a felony involving moral turpitude under the laws of this state to become a registered lobbyist unless ten years or more have elapsed since the completion of the person's sentence. The administration of this article is vested in the commission.

(2) When a person is hired or retained as an employee or agent or independent contractor and under the agreement of the parties the primary duties, or a substantial part of the duties, of the person will involve lobbying activities, the person shall register as a lobbyist before commencing lobbying activities.

(b) Each lobbyist who is required to register under this article shall file an application for registration with the commission. The application shall be verified by the applicant and shall contain:

(1) The applicant's name, address, and telephone number;

(2) The name, address, and telephone number of the person or agency that employs, appoints, or authorizes the applicant to lobby on its behalf;

(3) A statement of the general business or purpose of each person, firm, corporation, association, or agency the applicant represents;

(4) If the applicant represents a membership group other than an agency or corporation, the general purpose and approximate number of members of the organization;

(5) A statement signed by the person or agency employing, appointing, or authorizing the applicant to lobby on its behalf;

(6) If the applicant is a lobbyist attempting to influence rule making or purchasing by a state agency or agencies, the name of the state agency or agencies before which the applicant engages in lobbying;

(7) A statement disclosing each individual or entity on whose behalf the applicant is registering if such individual or entity has agreed to pay him or her an amount exceeding $10,000.00 in a calendar year for lobbying activities;

(8) A statement verifying that the applicant has not been convicted of a felony involving moral turpitude in the courts of this state or an offense that, had it occurred in this state, would constitute a felony involving moral turpitude under the laws of this state or, if the applicant has been so convicted, a statement identifying such conviction, the date thereof, a copy of the person's sentence, and a statement that more than ten years have elapsed since the completion of his or her sentence; and

(9) A statement by the applicant verifying that the applicant has received the Georgia General Assembly Employee Sexual Harassment Policy as set forth in the Georgia General Assembly Handbook, has read and understands the policy, and agrees to abide by the policy.

The commission shall retain on file the statement required pursuant to paragraph (9) of this subsection and any renewal statements under subsection (d) of this Code section for the duration of the lobbyist's registration period. A copy of such statement shall be sent to the Legislative Fiscal Office.

(c) The lobbyist shall, prior to any substantial or material change or addition in their registration, file a supplemental registration indicating such substantial or material change or addition to the registration prior to its expiration. Previously filed information may be incorporated by reference. Substantial or material changes or additions shall in-

clude, but are not limited to, the pertinent information concerning changes or additions to client and employment information required by paragraphs (2), (3), (4), (6), and (7) and conviction status required by paragraph (8) of subsection (b) of this Code section.

(d) Each registration under this Code section shall expire on December 31 of each year. The commission may establish renewal procedures for those applicants desiring continuous registrations. Previously filed information may be incorporated by reference; provided, however, that the statement regarding the sexual harassment policy required under paragraph (9) of subsection (b) of this Code section shall be signed and filed each year as a part of the renewal process.

(e) The commission shall provide a suitable public docket for registration under this Code section with appropriate indices and shall enter promptly therein the names of the lobbyists and the organizations they represent.

(f)(1) Each person registering under this Code section shall pay the registration fees set forth in paragraph (2) of this subsection; provided, however, that a person who represents any state, county, municipal, or public agency, department, commission, or authority shall be exempted from payment of such registration fees.

(2)(A) There shall be no charge for annual lobbyist registration or renewal filed pursuant to this Code section; provided, however, that the commission shall set, collect, and retain the fees for the following items:

(i) Lobbyist identification card issued pursuant to this Code section;

(ii) Lobbyist supplemental registration filed pursuant to this Code section; and

(iii) Each replacement of a lobbyist identification card issued pursuant to this Code section.

(B)(i) For reports filed when the General Assembly is not in session, in addition to other penalties provided under this chapter, a late fee of $275.00 shall be imposed for each report that is filed late. In addition, a late fee of $1,000.00 shall be imposed on the fifteenth day after the due date for such report if the report has not been filed. A late fee of $10,000.00 shall be imposed on the forty-fifth day after the due date for such report if the report has not been filed.

(ii) The commission shall retain $25.00 of the first late fee received for processing pursuant to the provisions of Code Section 45-12-92.1.

(C)(i) For reports filed when the General Assembly is in session, in addition to other penalties provided under this chapter, a late fee of $275.00 shall be imposed for each report that is filed late. In addition, a late fee of $1,000.00 shall be imposed on the seventh day after the due date for such report if the report has not been filed. A late fee of $10,000.00 shall be imposed on the twenty-first day after the due date for such report if the report has not been filed.

(ii) The commission shall retain $25.00 of the first late fee received for processing pursuant to the provisions of Code Section 45-12-92.1.

(g) As soon as practicable after registering any such person, the commission shall issue to such person an identification card which shall have printed thereon the name of the lobbyist, a color photograph of the lobbyist, and the person or agency such lobbyist represents, provided that, when any such person represents more than one entity, such identification card shall have printed thereon the name of the registered person and the word "LOBBYIST." Each lobbyist while engaged in lobbying at the capitol or in a government facility shall display said identification in a readily visible manner.

(h) The commission shall regularly publish in print or electronically public rosters of lobbyists along with the respective persons, firms, corporations, associations, agencies, or governmental entities they represent. During sessions of the General Assembly, the commission shall weekly report to the Clerk of the House of Representatives, the Secretary of the Senate, and the Governor those persons who have registered as lobbyists since the convening of the General Assembly. The commission shall be authorized to charge a reasonable fee for providing copies of the roster to the public.

(i) The registration provisions of this Code section shall not apply to:

(1) Any individual who communicates personal views, interests, or professional opinions on that individual's own behalf to any public officer;

(1.1) An employee or independent contractor of a vendor who solely participates in soliciting a bid or in preparing a written bid, written proposal, or other document relating to a potential contract with a state or local government agency or a bona fide salesperson who sells to or contracts with a state or local government agency for goods or services, is not hired specifically to undertake influencing a public officer or state agency in the selection of a vendor to supply any goods or services to any state agency, and does not engage in other activities which would make such person a lobbyist;

(2) Any person who is invited by a public agency or governmental

entity to appear before a committee or at a hearing of such agency or entity, including but not limited to a committee of either chamber of the General Assembly or a joint committee thereof, for the purpose of giving testimony so long as such person clearly identifies himself or herself and the interested party on whose behalf he or she is testifying;

(3) Any person who is invited to furnish information upon the specific request of a public agency or governmental entity, including but not limited to a committee of either chamber of the General Assembly or a joint committee thereof, so long as such person clearly identifies himself or herself and the interested party on whose behalf he or she furnishes such information;

(3.1) Any individual who is not compensated for the specific purpose of lobbying, does not incur more than $250.00 per calendar year in reimbursable lobbying expenditures, and is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, educational, or charitable association, foundation, or organization which employs or contracts with a registered lobbyist for the purpose of lobbying;

(4) Any licensed attorney appearing on behalf of or representing a client, and any staff employed by such attorney, when such attorney is not compensated for the specific purpose of lobbying;

(5) Any person employed or appointed by a lobbyist registered pursuant to this Code section whose duties and activities do not include lobbying;

(6) Elected public officers or appointed public officials performing the official duties of their public office or position;

(6.1) Any employee of the executive or judicial branch of state government; provided, however, that when such an employee is acting on behalf of such government employer, meeting with or appearing before a public officer other than one from the same branch of government which employs such employee, and engaged in activity for which registration would otherwise be required under this Code section, such employee shall be required to display an identification card, issued by such employer, which shall have printed thereon the employee's name and the name of the employer; or

(7) Any public employee, aide, or intern who performs services at the direction of a member of the General Assembly including, but not limited to, drafting petitions, bills, or resolutions; attending the taking of testimony; collating facts; preparing arguments and memorials and submitting them orally or in writing to a committee or member of the General Assembly; and other services of like character intended to reach the reason of the legislators.

History.

Code 1981, § 21-5-71, enacted by Ga. L. 1992, p. 1075, § 16; Ga. L. 1994, p. 258, § 14; Ga. L. 2005, p. 859, § 21/HB 48; Ga. L. 2010, p. 9, § 1-49/HB 1055; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 1173, § 21/SB 17; Ga. L. 2011, p. 19, § 8/HB 232; Ga. L. 2013, p. 540, § 5/HB 142; Ga. L. 2016, p. 173, § 11/SB 199; Ga. L. 2017, p. 774, § 21/HB 323; Ga. L. 2018, p. 994, § 1/HB 973; Ga. L. 2022, p. 3, § 13/SB 120.

The 2022 amendment, effective March 2, 2022, inserted "in their registration" in the first sentence in subsection (c).

Code Commission notes.

The amendments to subparagraphs (f)(2)(D) and (f)(2)(E) of this Code section by Ga. L. 2010, p. 9, § 1-49, irreconcilably conflicted with and were treated as superseded by Ga. L. 2010, p. 1173, § 21. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 304/SB 17, not codified by the General Assembly, provides: "This Act shall become effective on January 10, 2011, and shall apply to all reports filed on and after such date; provided, however, that if Code Section 45-12-92.1 as enacted by HB 1055 at the regular session of the 2010 General Assembly does not become law, then the following provisions as enacted by this Act shall not become effective and shall be reserved instead: paragraph (2) of subsection (k) of Code Section 21-5-34; paragraph (2) of subsection (f) of Code Section 21-5-50; division (f)(2)(D)(ii) of Code Section 21-5-71; and division (f)(2)(E)(ii) of Code Section 21-5-71." HB 1055 became effective May 12, 2010.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Law reviews.

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 47-1002 and former Code Section 28-7-2 are included in the annotations for this Code section.

Compensated officers of unions and business organizations. — Compensated officers of unions or business organizations who express their opinions on proposed or pending legislation to members of the General Assembly on behalf of such entities must register as lobbyists in accordance with the Public Officials Conduct and Lobbyist Disclosure Act of 1992, O.C.G.A. § 21-5-70 et seq. 1993 Op. Att'y Gen. No. U93-2.

Nonresident lobbyists must register. — Persons, who reside outside of the state and who desire to aid or oppose legislation, must register regardless of whether they intend to appear in person to speak with members of the General Assembly. 1988 Op. Att'y Gen. No. 88-23 (decided under former § 28-7-2).

It is unnecessary for a person to appear in person in order to register so long as the person files a writing containing the required information. 1988 Op. Att'y Gen. No. 88-23 (decided under former § 28-7-2).

Time of issuance of registration card. — Person does not have to be issued identification card immediately upon reg-

istration, but must be issued an identification card as soon as it is feasible to do so. The Secretary of State may make a provision for the issuance of a picture identification card in addition to the card provided for by statute. 1988 Op. Att'y Gen. No. 88-23 (decided under former § 28-7-2).

Exemptions from registration. — State, county and city officials, employees and their representatives who intend, in their official capacities, to aid or oppose the enactment of any bill by either House of the General Assembly are not required to register with the Secretary of State, since nothing in the chapter, or in former subsection (a) of former Code 1933, § 47-1002, specifically made the statute applicable to the state or its political subdivisions. 1975 Op. Att'y Gen. No. 75-28 (decided under former Code 1933, § 47-1002).

To the extent that an organization is comprised solely of political subdivisions and the elected representatives thereof, and is funded solely from public funds paid by the political subdivisions represented by the organization, the exemption given officials and employees of political subdivisions would extend to such organizations. 1975 Op. Att'y Gen. No. 75-28 (decided under former Code 1933, § 47-1002).

RESEARCH REFERENCES

Am. Jur. 2d.

17A Am. Jur. 2d, Contracts, § 266 et seq.

C.J.S.

16D C.J.S., Constitutional Law, § 2241. 17A C.J.S., Contracts, §§ 305, 306.

ALR.

Validity of lobbying contracts, 67 A.L.R. 684.

Validity, construction, and application of state and municipal enactments regulating lobbying and lobbying contracts, 35 A.L.R.6th 1.

21-5-72. Denial, suspension, or revocation of registration; reinstatement.

(a) In addition to other penalties provided in this article, the commission may by order deny, suspend, or revoke for a period not to exceed one year the registration of a lobbyist if it finds that the lobbyist:

(1) Has filed an application for registration with the commission which was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) Has willfully violated or willfully failed to comply with this article or a rule promulgated by the commission under this article;

(3) Has failed to comply with the reporting requirements of this article; or

(4) Has engaged in lobbying practices in violation of this article.

(b) Application may be made to the commission for reinstatement. Such reinstatement shall be conducted in the same manner as required for an initial registration under this article and shall be conditioned

upon payment of the same registration fees applicable to an initial registration and also any outstanding penalty fees.

(c) Any person failing to comply with or violating any of the provisions of this article shall be subject to a civil penalty not to exceed $2,000.00 per violation.

History.
Code 1981, § 21-5-72, enacted by Ga. L. 1992, p. 1075, § 16.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state and municipal enactments regulating lobbying and lobbying contracts, 35 A.L.R.6th 1.

21-5-72.1. Regulation of certain contact between lobbyists and members of the General Assembly; making or acceptance of certain expenditures.

(a) No person who is required by the law of this state to register as a lobbyist shall meet at the state capitol, Coverdell Legislative Office Building, or other state government facility with any member of the General Assembly to discuss the promotion or opposition of the passage of any legislation by the General Assembly, or any committee of either chamber or a joint committee thereof, or the override of a veto unless such person either is wearing his or her valid official registered lobbyist badge or is a resident of the House or Senate district which such member represents.

(b)(1) No person who is registered as a lobbyist under Code Section 21-5-71 shall make any expenditure.

(2) No public officer shall with actual knowledge accept any expenditure from a person who is registered as a lobbyist under Code Section 21-5-71.

History.
Code 1981, § 21-5-72.1, enacted by Ga. L. 2013, p. 540, § 6/HB 142.

Law reviews.
For article on the 2013 enactment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

21-5-73. Disclosure reports.

(a) Each lobbyist registered under this article shall file disclosure reports as provided for in this Code section in the electronic format specified by the commission.

(b) A person who is required to register under this article and lobbies

to promote or oppose the passage of any legislation by the General Assembly, or any committee of either chamber or a joint committee thereof, or the approval or veto of legislation by the Governor shall file a semimonthly disclosure report on the first and fifteenth day of each month, current through the end of the preceding report, beginning January 15 and continuing throughout the period that the General Assembly is in session.

(c) A person who is required to register under this article and lobbies to promote or oppose the passage of any ordinance or resolution by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution shall:

(1) File a disclosure report, current through the end of the preceding month, on or before the fifth day of May, September, and January of each year instead of the reports required by subsections (b) and (d) of this Code section; and

(2) File such report with the commission, file a copy of such report with the election superintendent of each county involved if the report contains any lobbying expenditures relating to county or county school district affairs, and file a copy of such report with the municipal clerk (or if there is no municipal clerk, with the chief executive officer of the municipality) of each municipality involved if the report contains any lobbying expenditures relating to municipal affairs or independent school district affairs.

(d) A person who is required to register under this article and:

(1) Lobbies to promote or oppose the passage of any legislation by the General Assembly, or any committee of either chamber or a joint committee thereof, or the approval or veto of legislation by the Governor;

(2) As an employee of the executive branch or judicial branch of local government, lobbies to promote or oppose the passage of any ordinance or resolution by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;

(3) Lobbies to influence a public officer or state agency in the selection of a vendor to supply any goods or services to any state agency; or

(4) Lobbies to promote or oppose any matter before the State Transportation Board

shall file a monthly disclosure report, current through the end of the preceding period, on or before the fifth day of each month; provided,

however, that such monthly reports shall not be filed during any period that the lobbyist files a semimonthly report pursuant to subsection (b) of this Code section.

(e) Reports filed by lobbyists shall be verified and shall include:

(1) A description of all lobbying expenditures described in subparagraphs (D), (F), and (G) of paragraph (4.1) of Code Section 21-5-70, or the value thereof made on behalf of or for the benefit of a public officer or on behalf of or for the benefit of a public employee for the purpose of influencing a public officer by the lobbyist or employees of the lobbyist or by any person on whose behalf the lobbyist is registered if the lobbyist has actual knowledge of such lobbying expenditure. The description of each reported lobbying expenditure shall include:

(A) The name and title of the public officer or public employee or, if the lobbying expenditure is simultaneously incurred for an identifiable group of public officers or public employees the individual identification of whom would be impractical, a general description of that identifiable group;

(B) The amount, date, and description of the lobbying expenditure and a summary of all spending classified by category. Such categories shall include meals, lodging, travel, and tickets;

(C) The aggregate lobbying expenditures described in subparagraph (D) of paragraph (4.1) of Code Section 21-5-70 incurred during the reporting period; provided, however, that expenses for travel and for food, beverage, and lodging in connection therewith afforded a public officer or public employee shall be reported in the same manner as under subparagraphs (A), (B), and (D) of this paragraph;

(D) If applicable, the number of the bill, resolution, ordinance, or regulation pending before the governmental entity in support of or opposition to which the lobbying expenditure was made; and

(E) If applicable, the rule or regulation number or description of the rule or regulation pending before the state agency in support of or opposition to which the lobbying expenditure was made;

(1.1) In any case where lobbying expenditures are reported pursuant to subparagraph (A) of paragraph (1) of this subsection for an identifiable group not listed in subparagraph (D) of paragraph (4.1) of Code Section 21-5-70, the lobbyist shall certify on the disclosure report that no lobbying expenditure made on behalf of or for the benefit of any individual public officer exceeded $75.00;

(2) For those who are required to register under this article and

lobby to influence a public officer or state agency in the selection of a vendor to supply any goods or services to any state agency, the name of any vendor or vendors for which the lobbyist undertook to influence the awarding of a contract or contracts by any state agency together with a description of the contract or contracts and the monetary amount of the contract or contracts; and

(3) For those who are required to register under this article and lobby to promote or oppose the passage of any rule or regulation of any state agency, the name of the individual or entity for which the lobbyist undertook to influence the rule or regulation of a state agency.

(f) The reports required by this article shall be in addition to any reports required under Code Section 45-1-6, relating to required reports by state vendors of gifts to public employees. Compliance with this Code section shall not excuse noncompliance with that Code section, and compliance with that Code section shall not excuse noncompliance with this Code section, notwithstanding the fact that in some cases the same information may be required to be disclosed under both Code sections.

(g) The electronic filing of any disclosure report required by this article shall constitute an affirmation that such report is true, complete, and correct.

(h) Reserved.

(i) All lobbyists shall have a grace period of three business days in filing all disclosure reports.

History.

Code 1981, § 21-5-73, enacted by Ga. L. 1992, p. 1075, § 16; Ga. L. 1994, p. 258, §§ 15, 16; Ga. L. 2005, p. 859, § 22/HB 48; Ga. L. 2010, p. 1173, § 22/SB 17; Ga. L. 2011, p. 19, § 9/HB 232; Ga. L. 2011, p. 569, § 4/SB 160; Ga. L. 2013, p. 540, § 7/HB 142; Ga. L. 2019, p. 1056, § 21/SB 52.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2013, a semicolon was substituted for the period at the end of paragraph (e)(1.1).

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30/SB 17, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10/HB 232, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

Law reviews.

For article on the 2005 amendment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 129 (2013).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state and municipal enactments regulating lobbying and lobbying contracts, 35 A.L.R.6th 1.

21-5-74. Postemployment restrictions on lobbyists.

A lobbyist shall not be eligible for executive appointment to any board, authority, commission, or bureau created and established by the laws of this state which regulates the activities of a business, firm, corporation, or agency that the lobbyist represented until one year after the expiration of the lobbyist's registration for that business, firm, corporation, or agency.

History.

Code 1981, § 21-5-74, enacted by Ga. L. 2005, p. 859, § 23/HB 48.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.

For article on the 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state and municipal enactments regulating lobbying and lobbying contracts, 35 A.L.R.6th 1.

21-5-75. Postemployment restrictions on public officers.

(a) Except as provided in subsection (b) of this Code section, on and after January 8, 2007, persons identified in subparagraphs (A) through (D) of paragraph (22) of Code Section 21-5-3 and the executive director of each state board, commission, or authority shall be prohibited from registering as a lobbyist or engaging in lobbying under this article for a period of one year after terminating such employment or leaving such office.

(b) The lobbying prohibition contained in subsection (a) of this Code section shall not apply to persons who terminate such employment or leave such office but who remain employed in state government.

History.

Code 1981, § 21-5-75, enacted by Ga. L. 2005, p. 859, § 23/HB 48.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, pro-

vides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Law reviews.

For article on the 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state and municipal enactments regulating lobbying and lobbying contracts, 35 A.L.R.6th 1.

21-5-76. Contingent fees for lobbying prohibited; unauthorized persons on the floor while the General Assembly is in session.

(a) No person, firm, corporation, or association shall retain or employ a lobbyist for compensation contingent, in whole or in part, upon the passage or defeat of any legislative measure, upon the adoption or decision not to adopt any state agency rule or regulation, or upon the granting or awarding of any state contract. No lobbyist shall be employed for compensation contingent, in whole or in part, upon the passage or defeat of any legislation, upon the adoption or decision not to adopt any state agency rule or regulation, or upon the granting or awarding of any state contract.

(b) It shall be unlawful for any person registered pursuant to the requirements of this article or for any other person, except as authorized by the rules of the House of Representatives or Senate, to be on the floor of either chamber of the General Assembly while the same is in session.

History.

Code 1981, § 21-5-76, enacted by Ga. L. 2005, p. 859, § 23/HB 48; Ga. L. 2010, p. 1173, § 23/SB 17.

Editor's notes.

Ga. L. 2005, p. 859, § 28/HB 48, not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006.

Ga. L. 2010, p. 1173, § 1/SB 17, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

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Law reviews.

For article on the 2005 enactment of this Code section, see 22 Ga. St. U. L. Rev. 119 (2005).

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