ALAN WILSON
ATTORNEY GENERAL

June 23, 2011

Ms. Marci Andino
Executive Director
State Election Commission
PO Box 5987
Columbia, SC 29250

Dear Ms. Andino,

You have asked for guidance concerning two provisos recently adopted as part of the Appropriations Act by the Conference Committee. As you indicate, these provisos authorize "the State Election Commission (SEC) to use carry forward funds to conduct the 2012 Presidential Preference Primaries (PPP). A third proviso that would allow the SEC to contract with, and bill the political parties for the PPP was not adopted." You seek clarification and guidance concerning the authority to conduct the PPP's." Your questions, specifically, are:

> Do Provisos 79.6 and 101 79.12 give the SEC the authority to conduct the PPP's? Also, do the same provisos give the county election commissions the authority to conduct the PPP's?

Our answer to this question is "yes."

Law/Analysis

Proviso 79.6, adopted by the Conference Committee, states as follows:

> [f]iling fees received from candidates filing to run in the statewide or special primary elections may be retained and expended by the State Election Commission to pay for the conduct of the primary elections. Any balance in the filing fee accounts on June thirtieth, of the prior fiscal year may be carried forward and expended for the same purpose during the current fiscal year. In addition, any balance in the Primary and General Election Accounts on June thirtieth, of the prior fiscal year may be carried forward and expended for the same purposes during the current fiscal year. <u>In addition, the aforementioned funds may also be utilized to conduct the 2012 Presidential Preference Primary elections</u>.

(emphasis added).

Proviso 79.12, also adopted by the Conference Committee, further provides:

> [t]he State Election Commission is authorized to carry forward and use funds originally appropriated for Ballot Security <u>to conduct the 2012 Presidential Preference Primary elections</u> and the 2012 Statewide Primaries/Runoff.

Proviso 79.12 (emphasis added).

Proviso 79.14 has not been adopted by the Conference Committee. Such Proviso states:

> [t]he State Election Commission is authorized to enter into a contract with the state committee of a certified political party for the purpose of conducting the 2012 Presidential Preference Primaries. The political party's candidate for President must have received at least five percent of the popular vote in South Carolina during the most recent election for President. The State Election Commission must bill each political party for expenses associated with conducting the presidential preference primary. The State Election Commission must conduct the presidential preference primary in accordance with the provisions of Title 7 and party rules, provided that a registered elector may cast a ballot in only

> one presidential preference primary. However notwithstanding any other provision of Title 7, (a) the State Election Commission and the authorities responsible for conducting the election in each county shall provide for cost-effective measures in conducting the presidential preference primaries including, but not limited to, combining polling places, while ensuring that voters have adequate notice and access to the polling places; and (b) the state committee of the party shall set the date and the filing requirements, including a certification fee. Political parties must verify the qualifications of candidates prior to certifying to the State Election Commission the names of candidates to be placed on primary ballots. The written certification required by this section must contain a statement that each certified candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications in the United States Constitution, statutory law, and party rules to participate in the presidential preference primary for which he has filed. Political parties must not certify any candidate who does not or will not by the time of the general election meet the qualifications in the United States Constitution, statutory law, and party rules for the presidential preference primary for which the candidate desires to file, and such candidate's name must not be placed on a primary ballot. Political parties may charge a certification fee to persons seeking to be candidates in the presidential preference primary for the political party. A filing fee not to exceed twenty thousand dollars, as determined by the State Election Commission, for each candidate certified by a political party must be transmitted by the respective political party to the State Election Commission and must be used for conduction the presidential preference primaries.

Proviso 79.14.

In resolving your questions, the following principles of statutory construction, as articulated by our Supreme Court in Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund, 389 S.C. 422, 429, 699 S.E.2d 687, 690 (2010), are applicable:

> [t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578,581 (2000) (citation omitted). The text of a statute as drafted by the legislature is considered the best evidence of the legislative intent or will. See, Id. "If a statute's language is plain, unambiguous, and

> conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 88, 650 S.E.2d 465, 472 (2007) (citation omitted).

We note that both of the provisos adopted use the word "conduct" in the context of the Elections Commission's authority with respect to the 2012 Presidential Preference Primaries. We find instructive an opinion rendered by this Office on April 13, 1995. There, we construed the word "conduct" in a related context – the transfer of powers from a municipal election commission to the court election commission for the "conducting" of municipal elections. There, we stated:

> [e]xactly what constitutes the "conduct" of a municipal election may be examined. The word "conduct," used as a verb, has been defined as "to introduce, to manage, to command," or "to manage, carry on, control, direct." People v. Hill, 18 Misc.2d 352, 192 N.Y. Supp. 342, 344 (Ct. Special Sessions, New York City 1959). In State v. Mahfouz, 181 La. 23, 158 So. 609 (1935), the court stated that "[t]he transitive verb 'conduct,' says Webster, 'stresses the idea of immediate supervision or personal leadership.' It means to lead, to have direction of, to manage, to direct, to carry on." 158 So. at 609. The South Carolina Supreme Court has on at least one occasion stated that, in construing the concept of conducting an election, the term "conduct" would not be used in a narrow or limited sense, concluding that conducting the election would also embrace declaring the results of the election, though the decision did not construe §5-15-145 and the facts of the case are not similar to the situation presented here. Blake v. Walker, 23 S.C. 517 (1885). Thus, to conduct an election would be to manage, direct, or carry on the election, in a broad sense of the term "conduct."

Op. S.C. Atty. Gen., April 13, 1995.

Based upon the foregoing, we believe the two provisos (79.6 and 79.12) provide authority to the State Election Commission to conduct the Presidential Preference Primaries. While Proviso 79.14 is a far more detailed Proviso and, as you note, "would allow the SEC to contract with, and bill the political parties for the PPP's," we do not comment upon this Proviso since it has not been adopted. In our opinion, Provisos 79.6 and 79.12 bestow upon the State Election

Commission the authority to "conduct" the 2012 Presidential Preference Primaries, using the funds referenced in those primaries for such purpose.[1]

Sincerely,

Robert D. Cook
Deputy Attorney General

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[1] We note that historically the parties themselves have conducted Presidential Preference Primaries. See §§ 7-13-15; 7-11-20; 7-11-25. However, the question you pose relates only to the authority bestowed to the State Election Commission by the two Provisos.

With respect to your question concerning the county election commission, we believe such commissions possess sufficient authority to assist in the "conducting" of the Presidential Preference Primaries in accordance with the Provisos. We note that we have stated that section 7-13-70 of the South Carolina Code gives county election commissions "broad powers" to "carry on general and special elections." Op. S.C. Atty. Gen., July 8, 1983. Given the additional authority provided by the two Provisos for the State Election Commission to "conduct" the Presidential Preference Primaries, it is reasonable to conclude that the Legislature also intended the county election commission to assist in such conduct of the PPP's.