ALAN WILSON
ATTORNEY GENERAL

July 10, 2012

Mark W. Tollison, Esquire
Greenville County Attorney
County Square
301 University Ridge, Suite 2400
Greenville, South Carolina 29601

Dear Mr. Tollison:

You have requested an opinion "concerning the appointment of replacement candidates for the November 12 general election." In this regard, you have enclosed a copy of a letter dated May 31, 2012 from the Greenville County Democratic Party addressed to the Greenville County Election Commission. You note that in the letter, the Greenville County Democratic Party ("GCDP") "indicates it has selected replacement candidates who had no primary opposition and who were disqualified as a result of the Supreme Court decision in *Anderson v. South Carolina Election Commission,* Op. No. 27120 (May 2, 2012)." Further, you note that "the GCDP has indicated that it is acting in accordance with the authority set out in S.C. Code Ann. § 7-11-50 (2011)." You observe that "[t]he replacement candidates are the same candidates who were disqualified as a result of the aforementioned Supreme Court decision." Thus, you seek an opinion "as to whether these persons who were disqualified as candidates as noted above, may be selected as substitution candidates under the method outlined in the letter from the Greenville County Democratic Party." It is our opinion that the Supreme Court decisions in this matter are determinative and that a court would likely conclude that § 7-11-50 is inapplicable.

Law/Analysis

S. C. Code Ann. Section 7-11-50 provides as follows:

§ 7-11-50. Substitution where party nominee dies, becomes disqualified or resigns for legitimate nonpolitical reason.

If a party nominee who was nominated by a method other than party primary election dies, becomes disqualified after his nomination, or resigns his candidacy for a legitimate nonpolitical reason as defined in this section and sufficient time does not remain to hold a convention to fill the vacancy or to nominate a nominee to enter a special election, the respective state or county party executive committee may nominate a nominee for the office, who must be duly certified by the respective county or state chairman.

"Legitimate nonpolitical reason" as used in this section is limited to:

> (a) reasons of health, which include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he continued;
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> (b) family crises, which include circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business;
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> (c) substantial business conflict, which includes the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his capability to carry out properly the functions of the office being sought.
>
> A candidate who withdraws based upon a legitimate nonpolitical reason which is not covered by the inclusions in (a), (b) or (c) has the strict burden of proof for his reason. A candidate who wishes to withdraw for a legitimate nonpolitical reason shall submit his reason by sworn affidavit.
>
> This affidavit must be filed with the state party chairman of the nominee's party and also with the election commission of the county if the office concerned is countywide or less and with the State Election Commission if the office is statewide, multi-county, or for a member of the General Assembly. A substitution of candidates is not authorized, except for death or disqualification, unless the election commission to which the affidavit is submitted approves the affidavit as constituting a legitimate nonpolitical reason for the candidate's resignation within ten days of the date the affidavit is submitted to the commission. However, where this party nominee is unopposed, each political party registered with the State Election Commission has the privilege of nominating a candidate for the office involved. If the nomination is certified two weeks or more before the date of the general election, that office is to be filled at the general election. If the nomination is certified less than two weeks before the date of the general election, that office must not be filled at the general election but must be filled in a special election to be held on the second Tuesday in the month following the election, provided that the date of the special election to be conducted after the general election may be combined with other necessary elections scheduled to occur within a twenty-eight day period in the manner authorized by Section 7-13-190(D).

A number of rules of statutory construction are applicable here in construing § 7-11-50. The primary consideration in interpreting any statute is ascertaining the intent of the Legislature. *Citizens and Southern Symptoms, Inc. v. South Carolina Tax Commission*, 280 S.C. 138, 311 S.E.2d 717 (1984). A statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the statute's operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. *Id.* In essence, the statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers. *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Clearly, the legislative language must be construed in light of the Legislature's intended purpose. *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964).

Section 7-11-50 applies when a party nominee "*becomes disqualified after his nomination* ... for a legitimate nonpolitical reason ... ." (emphasis added). Obviously, the GCDP is reading this provision as being applicable here because, it argues, the disqualification of these candidates did not occur until the *Martin* case was decided on May 2, 2012. At that point it is contended, the Democratic candidates found to be disqualified, were the Party's nominees (because unopposed) and thus § 7-11-50 is triggered.

While such an interpretation may be a plausible reading of § 7-11-50, we do not believe that a court would likely adopt this construction. It is well recognized that "[a] candidate who is ineligible for [an] ... office he or she seeks may not be certified to have his or her name placed on the ballot ... ." 29 C.J.S. *Elections* § 275. In this regard, "[w]hen an ineligible candidate is nominated by a primary election, the whole election is void." 29 C.J.S. *Elections* § 221. In other words, an ineligible candidate was never a proper "candidate."

Our Supreme Court in *Florence Co. Dem. Party v. Florence Co. Repub. Party*, Op. No. 27128 (June 5, 2012), referencing the Court's decision in *Anderson v. S.C. Election Comm.*, ___ S.C. ___, 725 S.E.2d 704 (2012), reiterated that "[i]n *Anderson*, this Court held § 8-13-1356 requires non-exempt candidates to file an SEI [State of Economic Interest] along with a Statement of Intention of Candidacy (SIC)." The *Florence County* Court emphasized that *Martin* had, on request for rehearing, clarified that "filing a paper copy of SEI simultaneously with the filing of an SIC is *the only method* by which a non-exempt individual can comply with § 8-13-1356." *Id.* With respect to candidates and political parties failing to comply with § 8-13-1356, the Court strong emphasized:

> [w]e reject the interpretation of the statutes urged by the County Republicans and hold those candidates who failed to file a paper copy of an SEI along with an SIC were *improperly certified as candidates*. We direct the County Republicans to file with this Court, the Florence County Election Commission, and the South Carolina State Election Commission, by 10:00 a.m. on June 6, 2012, a list of only those non-exempt candidates who simultaneously filed an SEI and an SIC with the County Republicans and a sworn statement that all those candidates were properly certified as defined by the Court in *Anderson* and in this case. If the Florence County Election Commission is able to correct the ballots to remove all *improperly certified candidates* prior to the party primaries scheduled for June 12, 2012, it shall do so. If this task is not possible, signs shall be prepared and placed in all affected polling places setting forth the names of the *improperly certified candidates* who appear on the ballots and advising voters that a vote cast for any of the candidates will not be counted .... The Florence County Election Commission is directed not to county any votes cast for an improperly certified candidate. In the event an *improperly certified candidate* is inadvertently left on the ballot after the required revisions, the political parties shall comply with § 8-13-1356(E) and *shall not certify the candidates for the general election*).

Id. (emphasis added).

It is striking that the Court in *Florence County* repeatedly referred to those non-exempt candidates who did not meet the filing requirements of § 8-13-1356 as "improperly certified." The Court

also made clear that such persons should not be certified "for the general election." Similarly, as we stated in *Op. S.C. Atty. Gen.*, May 26, 1980 (1980 WL 121244) "failure to timely file the ethics statement, thereby resulting in a prohibition of placing a candidate on the ballot, cannot be circumscribed by a procedure that would somehow authorize a political party to nominate the disqualified candidate."

Conclusion

Based upon the foregoing, we do not read § 7-11-50 as applicable to this situation. We believe the purpose of § 7-11-50 is to allow political parties to replace candidates who have died, withdrawn or *became ineligible following nomination. Anderson* and *Florence County* make clear that candidates who failed to follow § 8-13-1356 were "improperly certified" candidates, i.e. they were never eligible at all. Thus, these persons did not "become [] disqualified after … nomination," but never qualified at all. The purpose of § 7-11-50, to allow a political party to replace a candidate who "becomes disqualified after his nomination" would be thwarted were it to be used to replace the candidate who was "improperly certified" with that same disqualified person.

Moreover, the Supreme Court has made clear that those disqualified by § 8-13-1356 may not be placed upon the general election ballot. We believe that, absent a ruling from the Supreme Court altering or modifying that instruction, we conclude that the Supreme Court meant what it said. Accordingly, we are unable to advise you that § 7-11-50 may be used in this circumstance to substitute the same candidates which *Martin* and *Florence County* held were disqualified.

Sincerely,

Robert D. Cook
Deputy Attorney General

RDC/an