

The State of South Carolina



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October 9, 1986

The Honorable Caldwell T. Hinson
The Senate of South Carolina
1115 Chesterfield Avenue
Lancaster, South Carolina 29720

Dear Senator Hinson:

You have requested our Office advise you as to the procedures to be followed to nominate a replacement candidate for the late Representative Mangum. It is my understanding that Representative Mangum was the Democratic nominee for his House seat, he was unopposed, and his death occurred approximately thirty days before the general election set for November 4, 1986.

South Carolina Code of Laws, 1976, Section 7-11-50 provides the procedure to be followed should a candidate, as here, die after his nomination but before the general election. This section provides in part that

[i]f a party nominee dies...and sufficient time does not remain to hold a convention or primary 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 such office, who shall be duly certified by the respective county or state chairman.

This section is triggered by the death, disqualification or resignation for a legitimate nonpolitical reason of the nominee and, there not being sufficient time to hold a primary or convention.¹ The statute is silent as to who should decide if sufficient time does not exist to hold a primary or convention. However, in the absence of a specific statute, it would

1/ This interpretation of the statute is the same as the interpretation given in dicta in the case of Charleston County Democratic Party v. Charleston County Republican Party, copy attached.

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appear that the proper body to make this determination would be the party itself as the party would be in the best position to determine, pursuant to their rules and the applicable statutes, if sufficient time remains to call a primary.

Assuming the party does not find that there is sufficient time to hold a primary or convention, the provisions of this statute would apply, and the executive committee of the Democratic party would nominate a new nominee to replace the late Representative Mangum. However, since Representative Mangum was unopposed, a proviso in the statute becomes applicable. This provision would authorize other political parties to also nominate a candidate because the original candidate was unopposed and because the death occurred less than forty-five days prior to the general election, the election would be postponed until the first Tuesday in December. The proviso to which I refer reads as follows:

Provided, that where such a party nominee is unopposed each political party registered with the State Election Commission shall have the privilege of nominating a candidate for the office involved....If the event occurs less than forty-five days prior to the election such office shall not be voted on until the first Tuesday in the month following such election and such nomination must be certified not less than fifteen days prior thereto.

As stated previously, if the party should determine that there is sufficient time to hold a primary or convention then this statute does not apply. However, the dates for the primary or convention should be precleared by the Justice Department prior to the holding of the primary or convention.

I am enclosing for your information, some prior opinions of this Office concerning this statute which might be of assistance to you.

Sincerely yours,



Treva G. Ashworth
Senior Assistant Attorney General

TGA/ss
Enclosures

REVIEWED AND APPROVED BY:



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