



ALAN WILSON
ATTORNEY GENERAL

April 20, 2022

Howard M. Knapp
Executive Director
South Carolina Election Commission
P.O. Box 5987
Columbia, SC 29250

Dear Director Knapp:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

The South Carolina State Election Commission (SEC) has been notified by the chairperson of a certified political party of a candidate's intention to file for the party's nomination during the upcoming March filing period by submitting the necessary paperwork to the SEC by mail. According to the chairperson, the candidate plans to complete the Statement of Intention of Candidacy/Party Pledge (SICPP) form, have it notarized, and mail it to the SEC via the United States Postal Service. The candidate in question would not be submitting a filing fee check as required by S.C. Code § 7-13-40 as the candidate plans to seek the nomination of a party that nominates its candidates by convention, and a filing fee would not be required.

The SICPP form is a combined form designed to meet the requirements of both the Statement of Intention of Candidacy form required by S.C. Code § 7-11-15 and the Party Pledge form required by S.C. Code § 7-11-210. S.C. Code § 7-11-210 requires the form to be "signed in the presence of an individual authorized by the election commission director." The SEC Executive Director has authorized any employee of the SEC or the county boards of voter registration and elections to witness these signatures. The Executive Director has also authorized the signatures to be witnessed by a South Carolina Notary Public.

Traditionally, the vast majority of candidates file by appearing in person at the appropriate filing location. Some candidates file by having another person (an agent) appear in person to submit the appropriate documents. While filing in

person and filing by agent are clearly authorized, state law does not directly address filing by U.S. mail or by other remote means (e.g., email and fax).

Our question submitted for your opinion is whether the SEC is authorized to accept candidate filing documents submitted by remote means, specifically by U.S. mail, email or fax, assuming the documents are timely submitted within the filing period required by law.

Law/Analysis

It is this Office's opinion that our state courts would likely defer to the State Election Commission's (the "Commission") interpretation of whether candidates are permitted to submit the Statement of Intention of Candidacy/Party Pledge (SICPP) form by remote means because, as your letter notes, state law does not directly address this issue. It is this Office's long standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013). In Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014), the South Carolina Supreme Court explained, "[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations." The Court stated that the determination of whether deference is afforded to an agency's interpretation of the statutes and regulations it administers involves two separate steps. Id.

First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. See Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("We recognize the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation. Nevertheless, where, as here, the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." (citations omitted)); Brown v. S.C. Dep't of Health & Env'tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("Where the terms of the statute are clear, the court must apply those terms according to their literal meaning."). If the statute or regulation "is silent or ambiguous with respect to the specific issue," the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference. Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); see also Brown v. Bi-Lo, 354 S.C. at 440, 581 S.E.2d at 838.

Kiawah Dev. Partners, II, 411 S.C. at 32–33, 766 S.E.2d at 717. The South Carolina Code requires the Commission, through its executive director, to supervise the conduct of elections and voter registration for compliance state and federal law. S.C. Code § 7-3-20 (2019). Therefore, this Office will defer to the Commission’s reasonable interpretations of the state election laws where statutes and regulations are silent or ambiguous in regards to a specific issue.

This Office agrees with the Commission’s assessment that state law does not directly address whether candidates may submit filing documents by remote means. As described in your letter, the SICPP form is designed to meet the requirements of both the Statement of Intention of Candidacy form required by S.C. Code § 7-11-15 and the Party Pledge form required by S.C. Code § 7-11-210. Section 7-11-15(E) states

The election commission with which the filing fee is filed must issue a receipt for the filing fee, stamp the receipt with the date and time the filing fee was received, provide a copy to the candidate or his agent, and provide a copy to the appropriate political executive party.

While the requirements in subsection (E), requiring the election commission provide a receipt for the filing fee and a clocked copy with the candidate or his agent, can be read to anticipate in-person delivery, these requirements can also be satisfied even when forms are submitted by remote means. Certainly, a commission that receives the filing fee via mail, for instance, can still stamp the date and time it is received, as well as provide copies to the candidate in same manner as it provides a copy the appropriate political executive party. Additionally, section 7-11-210 requires the following:

Every candidate for selection in a primary election as the nominee of any political party for member of the Senate, member of the House of Representatives, and all county and township offices shall file with and place in the possession of the county board of voter registration and elections of the county in which they reside by twelve o'clock noon on March thirtieth a like party pledge.

The party pledge required by this section to be filed by a candidate in a primary must be signed personally by the candidate, and the signature of the candidate must be signed in the presence of an individual authorized by the election commission director. Any party pledge of any candidate signed by an agent on behalf of a candidate shall not be valid.

(emphasis added). The requirement that the party pledge is to be “signed personally by the candidate” and “in the presence of an individual authorized by the election commission director” requires the candidate to appear in person, but not necessarily to file in person. Id. As your letter notes, South Carolina Notary Publics are authorized to witness candidate signatures. Accordingly, a candidate can appear in person before a notary public to have the signature on the party pledge witnessed and, subsequently, file the party pledge “with and place in the possession of the county board of voter registration and elections.” Id. This language concerning the filing

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of the party pledge form does not similarly express a requirement that the candidate personally appear before an authorized individual. Therefore, a court may well find that sections 7-11-15 and 7-11-210 are silent or ambiguous as they relate to whether remote filing of the combined SICPP form is permissible and defer to the Commission's interpretation on this point.

Conclusion

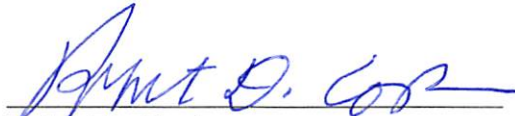
As is discussed more fully above, it is this Office's opinion that a court may well find S.C. Code §§ 7-11-15 and 7-11-210 are silent or ambiguous as they relate to the issue of whether remote filing of the combined SICPP form is permissible and defer to the State Election Commission's interpretation of these statutes on this point. See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 766 S.E.2d 707 (2014) (explaining when courts afford deference to an agency's interpretation of the statutes and regulations it administers).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General