



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

May 13, 2004

The Honorable Jeffrey D. Duncan
Member, House of Representatives
327B Blatt Building
Columbia, South Carolina 29211

Dear Representative Duncan:

Referencing S.C. Code Ann. Section 7-11-50 (Supp. 2003), you have asked what constitutes "business reasons" as used by a candidate for office who withdraws his candidacy pursuant to such provision. Section 7-11-50 states:

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...(b) family crises...(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 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 including members of the General Assembly...No substitution of candidates is 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...(emphasis added).

As to the terms used, "substantial business conflict", the word "substantial" is defined by Black's Law Dictionary (4th Ed.) as "belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid...." Of course, an instructive example of a "substantial business conflict" specifically provided by statute "includes the policy of an employer prohibiting employees

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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". However, the word "includes" is typically considered a word of expansion, not limitation. Allen v. Fauver, 742 A.2d 594 (N.J. 1999); The State, ex re. Cincinnati Post v. Schweikert, 527 N.E.2d 1230 (Ohio, 1988). Therefore, other scenarios of a business conflict nature would be covered by the term "substantial business conflict".

As to making such determination as to what constitutes "business reasons" or as used in the statute, "substantial business conflict", this office has determined that such is a matter for determination by the county election commission. This office in an opinion dated March 16, 1988 stated that

The statute further provides that the determination as to whether or not to accept the person's reasons for withdrawing as a legitimate nonpolitical reason...is to be determined for members of the General Assembly, by the county election commission. As this is a decision which is vested by the Legislature in the county election commission, this office cannot issue an opinion as to whether or not substitution would be appropriate as not only would it depend on specific facts but it is a decision that only the county election commission is empowered to determine.

This office similarly determined in an opinion dated August 2, 1996 that

While clearly the authority to make the determination of the presence of a "legitimate nonpolitical reason" under the statute would rest with the county election commission, such must be made in accord with the statutory provisions contained in Section 7-11-50. Of course, this office possesses no authority to make factual findings in an opinion...However, if an affidavit valid on its face and regular in form meets the requirement of Section 7-11-50, the commission is required to find a "legitimate nonpolitical reason" in accord with Section 7-11-50(c).

Such determination is consistent with prior opinions of this office which have indicated that an opinion of the Attorney General cannot determine facts. See, e.g., Op. Atty. Gen. dated November 4, 2003. Therefore, it would be a matter for determination by the county election commission as to whether a particular situation is included within the term of "substantial business conflict".

You also asked how long a political party has to file a candidate following the withdrawal of another candidate. Section 7-11-50 is silent as to the amount of time for filing a candidate. However, as referenced above, such provision states:

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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 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. (emphasis added).

A prior opinion of this office dated October 8, 1996 determined that as to the withdrawal of a candidate pursuant to Section 7-11-50,

(t)his 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 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.

Therefore, it would be a matter for the party to determine if the replacement candidate is to be nominated by the appropriate executive committee or chosen by a primary or convention.

If there is anything further, please advise.

Sincerely,

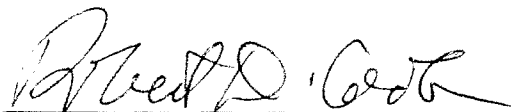


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