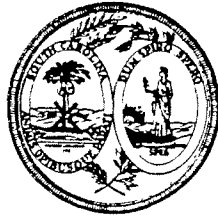


6918 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

April 28, 2000

James F. Hendrix, Executive Director
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Hendrix:

You have requested our opinion concerning the legal effect of the Democratic Party's failure to properly file in timely fashion several candidates' Statement of Intention of Candidacy for placement on the ballot in upcoming elections. You state that "there have been allegations made with this Office [State Election Commission] that the State Democratic Party did not certify their candidates for the State Senate and State House of Representatives, and in some cases did not file the Statement of Intention of Candidacy Form required by law, in a timely manner." You raise several questions which you feel need answering before you can advise county election commissions as to whether they can accept these certifications as valid. These include:

- (1) Does the State law require the filing of both the Statement of Intention of Candidacy Forms and a separate certification document, or does timely filing of Statement of Candidacy Forms constitute certification?
- (2) Does filing Statement of Intention of Candidacy Forms and/or a certification document in a candidate's county of residence constitute certification in a multi-county district?
- (3) If the attempted certifications are not valid, what is the recourse of the party?

Law / Analysis

It is well settled that where an election statute imposes a deadline for filing petitions or certificates of candidacy, these deadlines must be met without fail. Election officials possess no discretion whatsoever. Vandross v. Ellisor, 347 F.Supp. 197 (D.S.C. 1972); Kusler v. Sinner, 491 N.W.2d 382 (N.D. 1992); Cassity v. Turner, 601 S.W.2d 710 (Tenn. 1980); Andrews v. Sec. of State, 200 A.2d 650 (Md. 1964); Jones v. Mather, 709 S.W.2d 299 (Tex. Ct. App. 1986); Bristol v. Chiavaroli, 392 N.Y.S.2d 342 (N.Y.App.Div. 1976); 29 C.J.S. Elections, § 114 (1965). Courts have consistently held that the failure to file a declaration of certification of candidacy within the required time limits is fatal to an individual's candidacy. Vandross v. Ellisor, supra. A political party which is delinquent in the requirement of certification or is negligent in meeting the legal requirements which the State has imposed upon it is treated no differently in rendering the candidacy null and void than if the candidate himself has failed to file in time. Cassity v. Turner, supra; Page v. Kopf, 1992 WL 245968 (Del.Ch.).

In the Cassity case, the Supreme Court of Tennessee held that the requirement that a political party certify a candidate in compliance with the statutory deadline rendered the candidate ineligible to be placed on the ballot. The Court said that "[t]he filing deadlines in the election statutes are mandatory." The reason for construing deadline statutes mandatory, said the Court, was that

[t]o hold otherwise would render the mandatory filing deadline meaningless. It would allow political parties to ignore the filing deadlines.

Id. In short, the courts have been steadfast in concluding that a deadline is a deadline and political parties ignore such deadlines at their peril.

Clearly, this rule is applicable in South Carolina. Vandross, supra. The only possible conclusion otherwise would be application of S.C. Code Ann. Sec. 7-11-15. This provision reads in pertinent part as follows:

Except as provided herein, the county executive committee of any political party with whom statements of intention of candidacy are filed must file, in turn, all statements of intention of candidacy with the county election commission by noon on the tenth day following the deadline for filing statements by

candidates. If the tenth day falls on Saturday, Sunday or a legal holiday, the statements must be filed by noon the following day. The State Executive Committee of any political party with whom statements of intention of candidacy are filed must file, in turn, all the statements of intention of candidacy with the State Election Commission by noon on the tenth day following the deadline for filing statements by candidates. If the tenth day falls on Saturday, Sunday or a legal holiday, the statements must be filed the following day. No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot or special election ballot, except as otherwise provided by law if the candidate's statement of intention of candidacy has not been filed with the county election commission or State Election Commission, as the case may be, by the deadline. The candidate's name must appear if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy. (Emphasis added).

The two emphasized sentences appear to contradict one another and are thus ambiguous. Each sentence read in isolation appears to lead to a different result. The first sentence keeps the candidate off the ballot if the party fails to file the candidate's statement of intention of candidacy in a timely manner. In contrast, the second emphasized sentence can be read as requiring the candidate to be placed on the ballot so long as the candidate can produce the signed and dated copy of his timely filed intention of candidacy.

Of course, the cardinal rule of construction is to ascertain the intent of the Legislature. S.C. Mental Health Comm. v. May, 226 S.C. 108, 83 S.E.2d 713 (1954). In construing statutes, a court will endeavor to reconcile if it can, any apparently conflicting provisions of a statute so that all parts thereof might be given, as far as possible, full force and effect. Purdy v. Strother, 184 S.C. 210, 192 S.E. 159 (1937). Legislative intent must be gathered from the language of the statute as a whole, not that found in any particular sections. State v. Cola. Ry. Gas and Elec. Co., 112 S.C. 528, 100 S.E. 355 (1919). Force and effect must be given to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979).

Based upon these rules of construction, as well as the ambiguity of the statute, there is one possible construction to reconcile the conflict. One could construe the last sentence requiring placement on the ballot where the candidate produces a copy of his timely filed

Mr. Hendrix
Page 4
April 28, 2000

statement of intention of candidacy as applicable only in the circumstance where the election commission has omitted to place the candidate on the ballot through oversight, etc. In that instance, it would make sense to require placement on the ballot and would not conflict with the previous sentence which indicates a clear legislative intent to keep a candidate off the ballot if the deadline is not met by the party. Whether the Legislature intended this alternate construction is simply not apparent from the statute itself, however.

Our Supreme Court has never construed § 7-11-15, particularly in this context. However, several candidates and the State Democratic Party recently brought suit seeking redress for the refusal of the York County Registration and Elections Office to place the names of the candidates on the ballot. In other words, the State Democratic Party sought to rectify through the courts its failure to meet the April 10 deadlines as well as its failure to certify candidates in counties other than in the county of the candidate's residence. The Party's own complaint alleged that the State Democratic Party failed to certify one of the candidates properly and the certifications of the other candidates were filed in the candidates' counties of residence, but not in York County.

The matter was uncontested in a proceeding before Circuit Judge Henry Floyd, but instead was consented to by the York County Election Commission. Judge Floyd held in essence that the Party's failings should not punish the candidates who had filed the appropriate documents on time. The Judge based his decision primarily on the above referenced sentence of § 7-11-15 which provides that "the candidate's name must appear if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy." With apparently no objection, Judge Floyd thus ordered the candidates' names to be placed on the ballot in York County.

Obviously, Judge Floyd's Order will not be appealed since it was consented to. Thus, the question of whether or not his ruling would be upheld on appeal to the Supreme Court would be speculative on our part. There is little doubt that the Court would find that South Carolina law requires political parties to meet the election deadlines imposed by law. Whether or not the Supreme Court would rule that this would keep a candidate, who has himself timely filed, off the ballot however, is unclear. Case law says yes, but § 7-11-15 would also need to be considered. One sentence of the statute mandates that the candidate should be kept off the ballot where the Party misses the deadline; the other sentence of the statute declares otherwise. In this instance, in view of Judge Floyd's Order, we must apply our longstanding policy that we may not "... by issuing an opinion attempt to supersede or reverse any order of a court"

Mr. Hendrix
Page 5
April 28, 2000

The only way to clear up this ambiguity in the statute is by way of declaratory judgment. There is enough doubt in § 7-11-15 regarding what remedy or penalty is applicable where the party fails to meet its statutory obligation, that the question should have a full adversarial hearing before a court. Only a court can make a determination as to whether or not a candidate's name is placed on the ballot.

With respect to your other questions, you ask whether the law requires the filing of both the Statement of Intention of Candidacy Forms and separate certification document, or whether the timely filing of Statement of Candidacy Forms constitute certification. The law does not specifically require a separate certification document. Therefore, certification, as required by § 7-13-40 could be accomplished by a political party filing in a timely manner the Statement of Intention of Candidacy Forms with the State Election or the County Election Commission, whichever is responsible under the law for preparing the ballot.

Additionally, you ask whether filing of the Statement of Intention of Candidacy Forms and/or certification documents in a candidate's county of residence constitutes certification in a multi-county district. Section 7-13-40 requires that certification must be made to either the State Election Commission or the county election commission, depending upon which entity is responsible for preparing the ballot. It is our understanding that county elections commissions, rather than the State Election Commission, prepare ballots in the majority of counties.

Clearly, the better reading of the statute would be that in multi-county districts, certification should be made to each county election commission, or the State Election Commission if a county so chooses. If certification is only filed by the party in the candidate's county of residence, other counties in the district would not know to put the candidate's name on the ballot. It appears, however, that Judge Floyd ruled in York County that the candidate should not be punished for the party's failure to certify in all counties in the multi-county district. Again, this Office possesses no authority in an opinion to supersede the ruling of a circuit court judge. As with the case of what remedy is appropriate for the failure of a party to certify their candidates on time, a declaratory judgment would resolve this issue with finality.

Conclusion

Election time deadlines must be met. A deadline is a deadline and political parties ignore these deadlines at their peril. Courts have recognized that the purpose of a time

Mr. Hendrix
Page 6
April 28, 2000

deadline in the election process is to notify everyone of an individual's candidacy by a specific date and time.

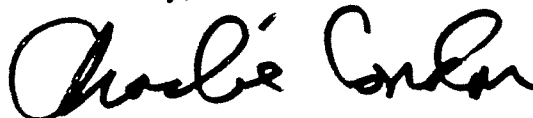
It is our opinion, therefore, that a political party in South Carolina is required by state law to file a political candidate's statement of intention of candidacy to the State or county election commission in a timely manner. Neither case law nor statutory law permits a political party to disregard legal deadlines any more than citizens can miss deadlines imposed upon them. Here, the Democratic Party failed to meet the deadlines which the law imposes.

The only issue is what penalty, if any, is imposed upon the candidate when the party misses its deadline. Overwhelmingly, case law gives the answer that the candidate may not be placed on the ballot as a result of the party's failure to meet the deadline.

Section 7-11-15 also expressly requires that a candidate may not be placed on the ballot where the political party fails to file the candidate's statement of intention of candidacy on time. However, Judge Floyd has recently ruled in a non-contested proceeding that another portion of that same statute requires the candidate to be placed on the ballot "if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy." Whether our Supreme Court would uphold Judge Floyd's ruling on appeal is one of speculation at this point because there will be no appeal in that case. It is this Office's longstanding policy that where a court with competent jurisdiction has ruled on a matter, this Office possesses no authority to supersede the Court.

In our opinion, there is sufficient doubt as to the statute's meaning that a declaratory judgment should be sought. Whether the statute requires that the failure of the party to file on time mandates keeping the candidate who has himself timely filed off the ballot must be settled by a Court in a full adversarial proceeding. Again, however, there is no doubt that State law requires that the political party must file on time.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Condon". The signature is fluid and cursive, with the first name "Charlie" and last name "Condon" clearly distinguishable.

Charlie Condon

CC/an