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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 13, 2000

The Honorable Theodore Brown
Member, House of Representatives
1306 Church Street
Georgetown, South Carolina 29440

RE: Informal Opinion

Dear Representative Brown:

Your opinion request has been forwarded to me for reply. In your request, you state:

> I ran in the June 2000 primary election for the South Carolina Senate as Democrat. At that time I signed a pledge for the Democratic Party pursuant to Section 7-11-210 which provides, in part, as follows:
>
> "... I hereby pledge myself to abide by the results of the primary or convention. I shall not authorize my name to be placed on the general election ballot by petition and will not offer or campaign as a write-in candidate for this office or any other office for which the party has a nominee. I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for the office has become deceased or otherwise disqualified for election in the ensuing general election."
>
> I now wish to run as an Independent candidate for the House seat that I currently hold. It is my understanding that the Democratic Party intends to seek an injunction to prevent me from running. I am asking for an opinion from you on the constitutionality of the pledge and the injunction that may prevent me from running as an Independent candidate per Section 7-11-210.

Your question has been addressed by the South Carolina Supreme Court in Florence County Democratic Party v. Moore, 281 S.C. 218, 314 S.E.2d 335 (1984). In this case, a candidate appealed a circuit court order which restrained him from offering or campaigning in a general election for city council and prohibited him from having his name placed on the ballot for the general election. The Supreme Court rejected several constitutional challenges to the statute and concluded the notice and pledge requirements of Section 7-11-210 were constitutional.

Section 7-11-210 has been amended by Act No. 236 of 2000. However, it does not appear that this amendment alters the conclusions reached by the court in the above cited case.[1] In any event, an Act of the General Assembly must be presumed valid and constitutional. An Act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). Every doubt regarding the constitutionality of an Act of the General Assembly must be resolved favorably to the statute's constitutional validity. More than anything else, only a court, and not this Office may declare an Act to be void for unconstitutionality. A statute "must continue to be followed until a court declares otherwise." Op. Atty. Gen. dated June 11, 1997.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,

Paul M. Koch

Paul M. Koch
Assistant Attorney General

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[1] I note that in an opinion dated May 27, 1997, this Office questioned the constitutionality of the notice and pledge requirements as they relate to candidates for federal office. These concerns, however, do not apply to the situation raised in your opinion request.