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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 20, 2000

The Honorable William S. Branton, Jr.
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Branton:

Attorney General Condon has forwarded your opinion request to me for reply. In your request, you state:

I am writing to formally request an opinion on whether or not the filing period for candidates for the Dorchester County School Districts 2 and 4 boards should be considered under a statute which was passed this session, but has not been pre-cleared by the United States Justice Department. We are presently in a situation where the new filing date closed on July 17, 2000, under the new law. The Justice Department cleared the new statute on July 18, 2000, one day after the filing closed. The old statute allowed a candidate to file sixty days prior to an election.

We have several candidates in Dorchester County who believe that they should be allowed to file because the new statute did not pass until July 18, 2000.

My research indicates that there may be a split of authority on this question. Attorney General Condon strongly supports the peoples' right to choose the candidate of their choice. Courts have also concluded that the laws governing the conduct of

Re: Robert L. Luber

The Honorable William S. Branton, Jr.

Page 2

July 20, 2000

elections should be liberally construed so as to promote rather than defeat candidacy. Myers v. McKeithen, 753 So.2d 252 (La.Ct.App. 1998). Any doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for public office. Id. This Office supports this view. However, there is some support for the proposition of "retroactive preclearance" of election laws which, in this case, would support an argument that the new law governs filing deadlines. Berry v. Doles, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978); Latham v. Molpus, 642 So.2d 1340 (Miss. 1994). In view of the fact that only a court can decide this matter with finality, it may be wise to seek a declaratory judgment action.

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,

A handwritten signature in black ink, appearing to read "P.M. Koch".

Paul M. Koch

Assistant Attorney General