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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 18, 1996

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

Re: Informal Opinion

Dear Mr. Hendrix:

You pose the following question and request an opinion thereupon:

> [w]e have received several inquiries regarding the legality of reopening the filing process when a single candidate or, in some cases, two candidates have filed with a political party as a candidate for an office during the statutory filing period and one or more of those candidates withdraws after filing is closed. I am writing to request an opinion from your office concerning this situation. The next to last paragraph of Section 7-11-15 seems, in my judgment to address this situation.

Law / Analysis

Several statutes may be applicable to the situation and thus must be examined. S.C. Code Ann. Section 7-11-55 provides in pertinent part as follows:

> [i]f a party nominee dies, becomes disqualified after his nomination, or resigns his candidacy for a legitimate nonpolitical reason as defined in Section 7-11-50 and was selected through a party primary election, the vacancy must be

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Request Letter

> filled in a special primary election to be conducted as provided in this section.

Moreover, Section 7-11-15 provides in pertinent part:

> [i]f, after the closing of the time for filing statements of candidacy, there are not more than two candidates for any one office and one or more of the candidates dies, or withdraws, the state or county committee, as the case may be, if the nomination is by political party primary or political party convention only may, in its discretion, afford opportunity for the entry of other candidates for the office involved; provided, that for the office of state Senator, the discretion must be exercised by the state committee.

The predecessor language in substantially similar form to the above-quoted portion of Section 7-11-15 has been in existence for many years and was originally codified as part of Section 7-13-40.[1] In 1988, however, Act No. 363 recodified this provision with slight modifications and inserted it as part of new Section 7-11-15. At the same time, the provision was removed from Section 7-13-40 which was also considerably revised. Thus, the question here is whether Section 7-11-55 or 7-11-15 controls.

Several principals of statutory construction are relevant to your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Browning v. Hartvigsen, 414 S.E.2d 115 (1992). The words in a statute must be given their plain and ordinary meaning without

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[1] Former Section 7-13-40 provided that

> [i]f, after the closing of the time for filing pledges, there be not more than two candidates for any one office and one or more of such candidates dies or withdraws, the state or county committee, as the case may be, may in its discretion, afford entry for the other candidates for the office involved ... .

resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Moreover, statutes in pari materia have to be construed together and reconciled so as to render both operable. State Farm Mut. Auto Ins. Co. v. Lindsay, 284 S.C. 472, 328 S.E.2d 80 (Ct. App. 1984). Generally, statutes relating to a specific subject matter prevail. Ramsey v. County of McCormick, 412 S.E.2d 408 (1991).

From the facts you have presented, it appears that the candidate's withdrawal occurs after the close of filing but before the primary. Applying the foregoing rules of construction, I would thus consider Section 7-11-15 rather than Section 7-11-55 to apply in that situation. First of all, Section 7-11-55 expressly deals with situations where the "party nominee ... resigns his candidacy for a legitimate nonpolitical reason as defined in Section 7-11-50 and was selected through a party primary election ...". (emphasis added). Moreover, Section 7-11-15 specifically addresses the situation where 'after the closing of the time for filing statements of candidacy" and "there are not more than two candidates for any one office and one or more of the candidates ... withdraws ... ." Reading Sections 7-11-15 and 7-11-55 together, it is evident that the former statute controls the situation after the closing of filing and prior to the primary and the latter deals with the withdrawal of a party's nominee after being chosen by the party. ["If a party nominee ... resigns for a nonpolitical reason ..."]. Finally, neither Section 7-11-15 nor its predecessor statute (Section 7-13-40) requires the candidate to have based his withdrawal upon a nonpolitical reason.

This interpretation is consistent with an earlier opinion of this Office. In Op. No. 88-25 (March 16, 1988) we deemed the predecessor to Section 7-11-15 (Section 7-13-40) to be applicable in this very situation. There, we addressed the issue of whether filing could be reopened where a candidate had withdrawn to accept a full-time position after filing had closed. We determined that Section 7-13-40 would be applicable in that instance. In the opinion, we stated:

> [t]he answer to your question would depend upon many variables, most importantly the timing of the resignation. South Carolina Code of Laws, 1976, as amended, Section 7-13-40 provides for primary nominations of candidates and provides that
>
> > [i]f after the closing of the time for filing pledges, there be not more than two candidates

> for one office and one or more of such candidates dies or withdraws, the State or county committee, as the case may be, may, in its discretion, afford the opportunity for the entry of other candidates for the office involved; provided that for the office of State Senator, the discretion shall be exercised by the State committee.

Therefore, if the candidate's withdrawal comes before the primary and there are only two candidates for that position, the party has the discretion to reopen filing. If the withdrawal occurs after the primary or convention nomination section 7-11-50 governs. This section provides in part that

> If a party nominee 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 or primary to fill the vacancy or to nominate a nominee to enter a special election, the respective state or county party executive may nominate a nominee for such office, who shall be duly certified by the respective county or state chairman.

(emphasis added). Thus, even though this opinion interpreted Section 7-13-40, as noted above, the opinion would be similarly controlling with respect to the applicability of Section 7-11-15 which is the successor provision. Thus, it is my opinion that Section 7-11-15 would be controlling where after the close of filing there are not more than two candidates and one or more candidates withdraws prior to the primary. Section 7-11-55 would be used to replace the nominee who withdraws after the primary.

While Section 7-11-15 would be applicable where withdrawal occurs prior to the primary, and the decision to reopen filing is a matter of discretion with "the state or county committee ... [to] afford the opportunity for the entry of other candidates," I would advise that it would be expected that the political parties would act reasonably in the exercise of such discretion. As we stated in Op. No. 2858 (March 17, 1970), the exercise of discretion "is not absolute." We noted in an opinion dated April 11, 1968 that "[i]f the

committee decides to open the entries for additional candidates, it should afford a reasonable time for their entry." In an opinion of March 30, 1972, we advised that "[a] two week period, the length of the original filing period, would be an appropriate period, in our opinion, to re-open the filing ... ."

It is a well recognized principle of law that where discretion is given by statute, the exercise of that discretion must be done within a reasonable period of time. It is well-established, for example, that

> [a] public officer is in duty bound to exercise the judgment or discretion which is reposed in him by law. If he fails, or refuses to do so, and does not act upon the subject or pass upon the question on which such judgment or discretion is to be exercised, then the writ of mandamus may be used to enforce obedience to the law. In other words, when in matters involving discretion the respondent refuses to act at all, mandamus may issue to move him to action and to exercise discretion in the matter.

52 Am.Jur.2d, Mandamus, § 77. Our Supreme Court has also stated:

> [w]hether the courts can control the action of officers or official boards, vested with discretionary power, when they refuse to act in consequence of a conclusion they have reached ... is a question of some difficulty. But it must be answered in the affirmative, on principle as well as authority.

Mauldin v. Matthews, 81 S.C. 414, 416 (1908). The need for such expedition is patently obvious in election matters where time is almost always at a premium. Thus, while Section 7-11-15 grants discretion to determine whether or not to allow additional filing for the primary, that decision, one way or the other, should be made expeditiously and with due diligence.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an
cc: Dr. Mark Hartley
Mr. Trey Walker

REVIEWED AND APPROVED BY:

Zeb C. Williams, III
Deputy Attorney General