

The State of South Carolina



Office of the Attorney General

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July 13, 1992

J. Lynn McCants, Executive Director
State Election Commission
Post Office Box 5987
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Dear Mr. McCants:

By your letter of July 2, 1992, you have asked for the opinion of this Office as to a portion of S.C. Code Ann. § 7-13-40, as amended by Act No. 253 of 1992, concerning transmission of candidates' filing fees to the State Election Commission. You have advised that the state's political parties have interpreted § 7-13-40 as requiring them to transmit to the State Election Commission only those fees for candidates whose names will be on the primary ballots and not for candidates who are unopposed. The State Election Commission has taken the position that all fees for all candidates must be transmitted to the Commission regardless of whether their names will appear on the ballot or not.

In part, § 7-13-40 provides:

The filing fees for candidates whose names are on ballots to be voted on in all primaries, except municipal primaries, must be transmitted by the respective political parties to the State Election Commission and placed by the executive director of the commission in a special account designated for use in conducting the primaries and must be used for that purpose. ... [Emphasis added.]

The language emphasized above is the language at issue here.

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The purpose of Act No. 253 of 1992 was generally to provide for the conduct of primary elections by the State Election Commission and by the respective county election commissions, removing that function from the state's political parties, should the parties choose to nominate candidates by primary election. The system of state-run primaries would centralize the entire election process and provide more oversight at the state level as to primary elections. Toward this end, certain funds were appropriated to the State Election Commission by the General Assembly to defray the costs of conducting the primary elections; however, it was also anticipated that funds generated by candidates' filing fees would be available to further defray election costs.

The emphasized language of § 7-13-40, which must be construed literally in the absence of ambiguity, State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982), seems to indicate that only the filing fees of candidates whose names will appear on the primary ballots, are to be transmitted to the State Election Commission. For whatever reason, this part of § 7-13-40 seems to distinguish between all candidates and those candidates whose names will appear on the primary ballots. Elsewhere, § 7-13-40 requires the certification of "the names of all candidates to be placed on primary ballots" to be made as specified; indeed, the names of unopposed candidates do not appear on primary election ballots, by virtue of § 7-11-90, and those individuals are certified for the general election ballots by the parties. Construing the literal language of § 7-13-40 seems to compel the conclusion that only the filing fees of candidates whose names will appear on the primary ballots be transmitted to the State Election Commission.

While resort cannot be had to opinions of individual legislators or other persons involved in the legislative process in interpreting a statute, Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942); Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928), we understand that the drafters of the amendment to § 7-13-40 may have intended that all filing fees be forwarded to the State Election Commission for the conduct of the primaries. Unfortunately, the literal interpretation of the statute does not appear to comport with the unofficially and informally expressed legislative intent.

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In keeping with the foregoing and acknowledging that the literal language may not comport with the unofficially and informally expressed intent of the legislature, this Office is constrained to conclude that the filing fees of those candidates whose names will not appear on primary ballots (i.e., who are unopposed in the primary elections) would not be transmitted to the State Election Commission and would instead remain with the political parties. We must advise further that this conclusion is by no means free from doubt; legislative or judicial clarification would be advisable to decide the matter with finality.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions