

## The State of South Carolina

Opinion No 88-25  
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March 16, 1988

The Honorable Joe Wilson  
Member, South Carolina Senate  
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Suite 606, Gressette Senate Office Bldg.  
Columbia, S.C. 29202

Dear Senator Wilson:

Attorney General Medlock has referred your recent letter to me for reply. You have inquired if a candidate withdraws to accept a full-time position, such as the ABC Commission, if that office could be opened for refiling. From information I have received, I understand the candidate to be a candidate for the General Assembly and the position to be an ABC Commissioner, as opposed to an employee of the ABC Commission. 1/

The 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 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 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.

1/ It should be noted that an individual could not hold both positions without violating the provisions of Article 3, Section 24 of the South Carolina Constitution regarding dual office holding.

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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.

'Legitimate nonpolitical reason' as used in this section shall be limited to the following:

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(c) Substantial business conflict, which shall include the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his capability to properly carry out the functions of the office being sought.

The statute further provides that the determination as to whether or not to accept the person's reasons for withdrawing as a legitimate nonpolitical reason which would, therefore, re-open filing is to be determined for members of the General Assembly, by the county election commission. As this is a decision which is vested by the Legislature in the county election commission, this Office can not issue an opinion as to whether or not substitution would be appropriate as not only would it depend upon the specific facts but it is a decision that only the county election commission is empowered to determine. It should be noted that this statute is only applicable when the party has a nominee who withdraws and sufficient time does not exist to hold another primary or convention. The decision as to whether or not sufficient time exists to hold a primary or convention is left to the discretion of the party.

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The statutes are silent as to what would occur if the withdrawal comes after the primary or convention nomination but sufficient time exists to hold a primary. Section 7-11-50 implies that a primary or convention would be held to replace the withdrawn candidate. However, in the absence of specific statutory guidelines, the mechanics of this eventuality would apparently be governed by party rules. It should also be noted that Section 7-13-390 prohibits a candidate's withdrawal less than thirty days before the election, for reasons other than those set out in Section 7-11-50.

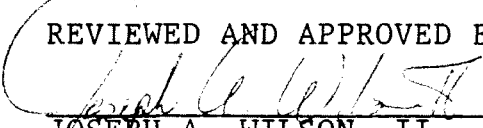

Sincerely yours,



Treva G. Ashworth  
Senior Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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