1980 WL 121244 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 26, 1980

***1** The Honorable Patrick B. Harris
Representative
District No. 9
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Harris:
You have requested an opinion from this office as to the procedure for refilling a position for candidates following the finding of ineligibility of a candidate due to failure to comply with the State Ethics Act.

South Carolina Code of Laws, 1976, Section 7-13-40 states in part 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.

This statute speaks in terms of allowing an office to be filled if the candidate has died or withdrawn. The question, therefore, arises if this statute would authorize a political party to substitute for a candidate who has been found to be ineligible pursuant to South Carolina Code of Laws, 1976, as amended, Section 8-13-610(b) for failure to file the required ethics statement.

It is the opinion of this office that a finding of ineligibility in this case is tantamount to an involuntary withdrawal. The manifest objective of the statute is to allow the party to slate a full ballot for the primary election. This statute should be given a liberal construction to allow nomination of persons to replace candidates found to be ineligible even though this authorization is not literally contained in the terms of the statute. It would defeat the purpose of the act to not authorize the provisions of Section 7-13-40 to function where, as here, there is an involuntary withdrawal.

At least one court has also reached this conclusion by considering the purpose and the intent of an Ohio statute. In The State ex rel Flex v. Gwin, 252 N.E. 2d 289 (1969), the court interpreted an Ohio statute that authorizes a political party to fill a vacancy when a candidate dies or withdraws prior to the election, to include an involuntary withdrawal.

Additionally, you have inquired if a person who has been found to be ineligible as a candidate for failure to file the required ethic statements could be allowed to refile for that office when the party selects a new nominee pursuant to Section 7-13-40. In my opinion, they could not.

Section 8-13-610(6) of the South Carolina Code of Laws, 1976, as amended, states
[N]otwithstanding any other provision of law, if a candidate for elective public office does not submit a statement of economic interests in accordance with the requirements of this action within twenty days after he becomes a candidate, his name shall not appear on the ballot, except upon just cause shown to the appropriate supervisory office.

***2** The terminology employed by this statute indicates an obvious intent to legislate completely in this area; and, this provision expressly prohibits allowing a candidate who fails to file the required statements on the ballot.[1] It would appear that a person disqualified by operation of the ethics statute before a primary election would be prohibited from getting on the ballot by operation of any of the primary election laws; and, that the ethics law prohibition of being placed on the ballot cannot be circumscribed by a procedure that would somehow authorize a political party to nominate that disqualified candidate.[2] Therefore, a candidate who is disqualified from the primary ballot would not be able to refile for that position if the party chooses to refill that nomination.

The question, therefore, arises if the candidate can be placed on the ballot by petition. As stated earlier in this opinion, it would appear that failure to timely file the ethics statement would prohibit a candidate from getting on the ballot through the primary procedure; however, there does not appear to be any express prohibition of allowing the ineligible primary candidate from being placed on the general election ballot by petition. It should be noted, however, that such a candidacy could violate the oath each primary candidate must file. This oath is set out in Section 7-11-210 of the Code and authorizes ex parte injunction to be brought against any person who filed the oath and thereafter runs for election to that office or any other office for which the party has selected a nominee. White v. West, Civil Action No. 74-1709, filed January 6, 1976 (copy attached).[3]

The only other possible procedure for a person to win nomination to the office would be by write-in. Of course, a write-in election would have to be spontaneous, an active campaign for a write-in election would still place the candidate in the position of violating his pledge.

Yours very truly,

Treva G. Ashworth
Senior Assistant Attorney General

Footnotes

1 See also Vandross vs. Ellisor, 347 F.Supp. 197 (DSC 1972) and South Carolina Code of Laws, 1976, Section 7-11-210 which provides a similar prohibition of candidacy when a candidate fails to file a notice of candidacy by a specified time.

2 This would also prohibit an unopposed candidate from being certified by the political party as their nominee for the general election ballot. The failure of a candidate to timely file before a primary would render that candidate ineligible for certification regardless of the factual situation of whether or not that candidate is opposed or unopposed. See Dobbins v. Cromwell, 577 S.E. 2d 190 (1979).

3 Of course, this would not prohibit a candidate from running in every situation, such as if the party does not reopen filing and no other candidate has filed for that office, a petition candidate who had been a disqualified candidate, would not be violating the oath.

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