

1980 WL 121210 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 8, 1980

\*1 The Honorable Gilbert E. McMillan  
Senator  
District 8  
347 Sumter Street, S.E.  
Aiken, South Carolina 29801

Dear Senator McMillan:

You have informed me that a Senator is unopposed for office and is considering withdrawing his candidacy for office. It is his intention to refile for office when the filing is reopened. You have inquired if this procedure would be authorized under the law.

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, this discretion shall be exercised by the state committee. (Emphasis added.)

Therefore, if a Senator should withdraw his candidacy for office, it would be in the discretion of the State committee as to whether or not they desire to reopen filing for this office. Should they decide to reopen filing, I am not aware of any State law that would prohibit the Senator from refiling for this same office. There is some language in CJS and Am. Jur. 2d that suggests that once a candidate has withdrawn his candidacy he cannot then 'withdraw his withdrawal.' 29 CJS, Elections § 95; 25 Am. Jur. 2d Elections, § 134. However, it would seem questionable that this language would apply to a candidate who has withdrawn his candidacy and then seeks to refile.

Any final decision as to this person's candidacy would have to be made by the political party concerned. The decision by necessity would have to be made by the political party on a case by case basis perhaps by taking into consideration such factors as the time of the withdrawal and the reason for the withdrawal.

Yours very truly,

Treva G. Ashworth  
Senior Assistant Attorney General

1980 WL 121210 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.