

1980 WL 121267 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 6, 1980

\*1 Netta Whisnant  
Chairman  
Florence County Voter Registration Board  
Box U Room 704  
City-County Complex  
Florence, South Carolina 29501

Dear Ms. Whisnant:

You recently advised this Office that the Democratic Party of the City of Florence will conduct a special primary election on June 10, the date of the regular State primaries preliminary to the November general election. The special primary election is preliminary to a special municipal election scheduled for July. Concerning this special primary election, you have inquired as to the effect thereon of § 7-3-1010 and [§ 7-13-1040, Code of Laws of South Carolina, 1976](#). More specifically, you have asked whether persons voting in the special primary election conducted by the City Democratic Party could vote in the regular primary conducted by the Republican Party, if otherwise qualified. Further you have informed me that each of the three primaries scheduled for June 10 will be conducted separately from the others.

The aforementioned statutes provide as follows:

The managers . . . shall require every voter to take the following . . . oath and pledge: 'I do solemnly swear or affirm . . . that I have not voted before at this primary election or in any other party's primary election or officially participated in the nominating convention for any vacancy for which this primary is being held.' [§ 7-13-1010]

No person shall be entitled to vote in more than one party primary election held the same date. [[§ 7-13-1040](#)]

The language in § 7-13-1010 was adopted by the General Assembly in 1972 [Act No. 1247, Acts and Joint Resolutions, 1974, p. 2441] as a result of the decision by the United States District Court for South Carolina in [Gordon v. Executive Committee of Democratic Party, 335 F.Supp. 166 \(1971\)](#). In this decision, the three-judge court stated that the language and purpose of [§ 7-13-1040](#) prevent 'a voter's participation in more than one primary election, preliminary to the same general or special election,' and held that the statutory predecessor to § 7-13-1010 [§ 23-400.71 of the 1962 Code] could prohibit nothing more. [Id.](#), at 169.

It appears that the prohibitory language in § 7-13-1010 is synonymous with party primary elections 'preliminary to the same general or special election.' This conclusion is supported by the [Gordon](#) decision, [Id.](#) at 169, and in turn supports that same interpretation of [§ 7-13-1040](#). Thus, these statutes require that we determine if the special municipal primary election noted in your correspondence falls within this prohibition.

The regular primary elections scheduled for June 10 are authorized by § 7-13-40, as amended, and are preliminary to the November general election required by § 7-13-10 for Federal, State and county offices. The special primary election is for the purpose of nominating candidates for a July special election to fill the unexpired term of a municipal office and is required by §§ 5-7-200, 5-15-50, 5-15-60 and 5-15-70. Furthermore, as a general matter, municipal elections are conducted independent of elections for Federal, State and county offices. [See](#) §§ 5-15-10-5-15-150. Therefore, the regular primary elections and the special municipal primary election are not 'preliminary to the same general or special election.'

\*2 Based on the foregoing, it is the opinion of this Office that neither § 7-13-1010 nor § 7-13-1040 would prohibit a person voting in the special primary election of the Democratic Party of the City of Florence scheduled for June 10 from also voting in any of the regular primary elections for Federal, State and county offices scheduled for the same date.

Sincerely,

James M. Holly  
Assistant Attorney General

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