1980 WL 120794 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 25, 1980

***1** The Honorable Claudia W. Howard
Georgetown County Judge of Probate
Georgetown, South Carolina 29440

Dear Judge Howard:
Mr. McLeod has referred your recent letter to me for reply. You have requested clarification as to two provisions of the South Carolina Code which appear to conflict. Specifically, you have stated that the case notes following Section 7-11-70 states that the former provisions of this statute which prohibited a defeated primary candidate from being placed on the general election ballot by petition or otherwise were struck from the present statute in 1974. Yet a 1969 Attorney General opinion annotated under Section 7-11-210 states that a candidate defeated in a primary election is prohibited from campaigning in the succeeding general election.

It is true that in Toporek v. South Carolina State Commission, (D.S.C. 1973) 362 F.Supp. 613) the Court invalidated the prior provision of Section 7-11-70 that had prohibited a defeated primary candidate from being placed on the general election ballot. The Court reasoned that it was inequitable to prevent defeated primary candidates from being placed on the ballot and not defeated convention candidates.

However, Section 7-11-210 is still a part of the election code. This section sets out an oath all primary candidates must sign which authorizes the political party to bring an ex parte action if the defeated candidate should run again in the general election. In 1959 when Redfearn v. Board of State Canvassers, 234 S.C. 113, 107 S.E. 2d 10, was decided, the statute did not contain the ex parte provisions it now does; it merely stated that the person signing the oath would abide by the results of the primary. The Court held that they would not decide if a defeated candidate running as a write-in was legally or morally proper.

Following that Finding the General Assembly inserted the provision that violating the oath would constitute grounds for an ex parte application to the courts. Toporek in dicta stated that Redfearn had held that the oath was merely a moral commitment. A more recent case, White v. West (unreported) CA No. 74-1709 (1976), upheld the oath and its prohibition against defeated primary candidates from running for office.

Therefore, this provision would still prohibit a defeated primary candidate from offering or campaigning in the general election.

Additionally, you question the propriety of a person that does not have any qualifications other than being registered to vote being able to file for an elective office. Of course, as you are aware, South Carolina Constitution, Article XVII, Section 1 A sets out the qualifications for holding an office and states that '[e]very qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution.' The General Assembly cannot add additional requirements to a constitutional office but may to offices established by the Legislature. McLure v. McElroy, 24 S.C. 106, 44 S.E. 2d 101 (1947).

***2** Further, you have raised a question concerning Section 4-71-10. This provision states that the term of county officers will begin on the first Tuesday in January. You have inquired if an office commenced on January 6, 1981, if the present officer would remain in office until January 6 or be terminated on the last day of the prior year.

An elected official is to hold his office until his successor is elected and qualified. Therefore, the prior official would hold office until January 6, when the newly installed officer would then take office.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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