HENRY MCMASTER
ATTORNEY GENERAL

March 4, 2008

Mr. Michael J. Young
Director of Registration and Elections
Florence County Voter Registration and Elections Commission
2685 South Irby Street, Drawer D
Florence, South Carolina 29505

Dear Mr. Young:

We understand from your letter that the Florence County Voter Registration and Elections Commission ("the County Commission") seeks an opinion of this Office in regard to Section 7-13-15 of the South Carolina Code, concerning primaries to be conducted by the State Election Commission and county election commissions on the second Tuesday in June. In your letter, you stated that the City Council of the City of Florence adopted a municipal ordinance requesting that the County Commission conduct the municipal primary concurrent with the primary authorized by Section 7-13-15. You inquired whether Section 7-13-15 (B) enables municipal councils to adopt statutes or ordinances in contravention of the municipal primary exclusion set forth in Subsection (A). You further inquired, "If municipal councils are *not* so enabled, what legislative bodies *are* authorized to enact such statutes or ordinances?"

Law/ Analysis

S.C. Code Section 7-13-15 (Supp. 2007) sets forth rules governing primaries to be conducted by the State Election Commission and county election commissions on the second Tuesday in June. It provides as follows:

> (A) (1) This section does not apply to municipal primaries.
>
> (2) This section does not apply to presidential preference primary elections for the Office of President of the United States, which are provided for in Section 7-11-20(B).
>
> (B) Except as provided in subsection (A) or unless otherwise specifically provided for by statute or ordinance, the following primaries must be conducted by the State Election Commission and the county election commissions on the second Tuesday in June of each general election year:

> (1) primaries for national offices, excluding the presidential preference primaries for the Office of President of the United States, which are provided for in Section 7-11-20(B); and
>
> (2) primaries for:
>
> > (a) state offices;
> > (b) offices including more than one county;
> > (c) countywide and less than countywide offices, specifically including, but not limited to, all school boards and school trustees; and
> > (d) special purpose district offices, which include, but are not limited to, water, sewer, fire, soil conservation, and other similar district offices.

(emphasis added.)

In reading Section 7-13-15, we must look to the rules of statutory interpretation. As our Supreme Court stated in Vaughan v. McLeod Regional Medical Center, 372 S.C. 505, 510, 642 S.E.2d 744, 746-47 (2007):

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989)...The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

The court, in construing a statute containing inconsistencies, will look to "the mischief sought to be avoided and the remedy intended to be afforded." State v. Firemen's Ins. Co. of Newark, N.J. 162 S.E. 334, 340 (1931), citing Law v. Prettyman & Sons, 149 S. C. 178, 146 S. E. 815, 817. Where the section in question, construed with other sections of the article in question, constitutes or creates an ambiguity, the court may go back to the original act and trace the real meaning intended by the Legislature. Id., citing Palmetto Lumber Co. v. Ry. Co., 154 S. C. 129, 151 S. E. 279.

A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law. Peake v. South Carolina Dept. of Motor Vehicles, 375 S.C. 589, 599, 654 S.E.2d 284, 290 (S.C. App., 2007). In the construction of statutes, the dominant factor is the intent, not the language of the legislature. A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 74, 321 S.E.2d 258, 262

(1984). "[W]ords ought to be subservient to the intent, and not the intent to the words." Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942).

The language of Subsection (A)(1), given its plain and ordinary meaning, expressly limits the applicability of the entire section, thus removing municipal primaries from the scope of authority granted to county commissions by the section. The first clause of Subsection (B), which states, "[e]xcept as provided in subsection (A)," appears to reinforce the exclusion of municipal primaries.

The language of Subsection (B) on which your inquiry focuses is the second clause of Subsection (B), which states, "or unless otherwise specifically provided for by statute or ordinance...." One possible interpretation of this language is that it creates a mechanism by which an ordinance could provide that the County Commission conduct municipal primaries, in contravention of the general municipal primary exclusion found in Subsection (A). However, it is our opinion that this language should be construed as words of limitation, rather than authorization. In our view, the phrase "unless otherwise specifically provided..." refers to the list of offices which follow therein. It modifies the subsequent phrase, which states, "the following primaries must be conducted...." We deem the language of Subsection (B) in question to be a limitation upon those offices enumerated in (B). The "statute or ordinance" referenced could mean a statute or ordinance dealing with one of the listed offices, such as a countywide office or a special purpose district office.

As you note in your letter, municipal offices are not included in the list of offices in Subsection (B) for which primaries must be conducted by the State Election Commission and county election commissions on the second Tuesday in June of each general election year. The list includes offices at the national, state, and county level, as well as special purpose district offices, but not municipal offices, such as the office of mayor or city council member. This also seems to indicate that the legislature did not intend to include municipal primaries within the scope of Section 7-13-15.

Given the potential ambiguity of the language of Subsection (B), it is also permissible for us to examine the legislative history of the statute. See Palmetto Lumber Co., supra. The current version of Section 7-13-15 was enacted in 2007 pursuant to Act No. 81, Section 2. An earlier version of the bill, a version which was not enacted, appears to include municipal offices in the list of primaries to be conducted by the State Election Commission and the county election commissions. See 2007 SC S.B. 99 (NS) (May 31, 2007). It could be inferred that the possibility of including municipal offices was considered and rejected. While legislative history is by no means authoritative when ascertaining legislative intent, we find it to be instructive in this instance.

The strong exclusionary language of Subsection (A) supports the proposition that the legislature intended to specifically exclude municipal primaries from Section 7-13-15. If the legislature had intended to create an exception that allowed for the inclusion of municipal primaries, it would have done so expressly. The municipal primary exclusion was explicitly stated in Subsection (A). Had the Legislature intended to create a mechanism for the inclusion of municipal primaries in contravention of Subsection (A), it would have done so explicitly. In other words, the general intent

of the statute is expressed in the strong exclusionary language of Subsection (A). As stated above, a clause–such as the language of Subsection (B) in question--should not be considered in isolation, but should be read in conjunction with the purpose of the entire statute and the policy of the law. See Peake, supra.

We understand that a tangential issue implicated by the municipal primary question is the ability of a voter to vote in one party primary for municipal offices and in another party primary for state or national offices. In a prior opinion dated August 3, 2007, we addressed the question of whether an individual may vote in the Democratic Presidential Primary and also vote in the Republican Primary for state and local offices. Please find enclosed a copy of that opinion for your reference.

Conclusion

It is our opinion that the legislature did not intend to include municipal primaries within the scope of Section 7-13-15. The strong exclusionary language of Subsection A providing that "[t]his section does not apply to municipal primaries" is not negated by the clause in Subsection (B) providing "or unless otherwise specifically provided for by statute or ordinance." In our view, the second clause of Subsection (B) is not a positive grant of authority to municipalities to enact ordinances in contravention of Subsection (A); rather, it relates to the list of primaries that follows. Municipal offices are not included in the list of offices in Subsection (B) for which primaries must be conducted by the State Election Commission and county election commissions on the second Tuesday in June of each general election year. Although the language of Subsection (B) may be considered somewhat ambiguous, it is our opinion that the intent of Section 7-13-15 is to exclude municipal primaries altogether from the statute's reach.

Sincerely,

Henry McMaster
Attorney General

Elizabeth H. Smith

By: Elizabeth H. Smith
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

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