

1978 WL 35156 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1978

***1 RE: Voting More Than Once At Elections**

Randolph Murdaugh Jr.
Solicitor Fourteenth Judicial Circuit
P. O. Box 457
Hampton, S. C.

Dear Solicitor Murdaugh:

You have asked this Office whether [Section 7-25-110 South Carolina Code](#) of Laws (1976) imposes criminal liability upon an individual who has voted in more than one primary yet who has voted for separate offices in each primary. It is the opinion of this Office that [Section 7-25-110](#) does not impose criminal liability on such an individual.

The above cited section reads in part:

If any person . . . shall vote more than once at such an election, for the same office, such person so voting more than once shall be fined or imprisoned at the discretion of the judge before whom the case shall be tried.

Apparent on the face of the statute is the condition that before liability attaches, the person so voting must have voted for the same office more than once. Resort to the time tested rule of statutory construction that penal statutes are to be construed strictly against the state and that any uncertainty or ambiguity must be resolved in favor of the defendant dictates the above conclusion. This result withstands the argument that the conduct complained of may be within the reason or mischief of the statute. See, West South Carolina Digest Vol.17 Statutes Key No. 241(1).

Therefore, since the statute in question does not specifically proscribe an individual's voting in more than one primary for the same office then no criminal liability would attach by virtue of this statute for that conduct.

However it should be pointed out that Section 7-13-1040 states that:

'No person shall be entitled to vote in more than one party primary election held the same day.'

Further, Section 7-25-190 provides that any person who shall vote in any primary election who is not entitled so to vote upon conviction shall be fined up to One Thousand (\$1,000.00) Dollars and/or imprisoned for up to one year. If, by way of example, an individual should vote first in the Republican primary, he would not be entitled by law then to vote in the Democratic primary, regardless for which offices he voted. Therefore, although the conduct described above is not proscribed by [Section 7-25-110](#), it is prohibited by Sections 7-13-1040 and 7-25-190.

Sincerely,

Scott Elliott
Staff Attorney

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