

1975 WL 29005 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 14, 1975

\*1 Senator Allen Carter  
The Charleston Legislative Delegation  
P.O. Box 487  
Charleston, S.C. 29402

Dear Senator Carter:

Mr. Frank Sullivan has requested our Office to review the proposed amendments to the general Resolution enacted by the Charleston County Legislative Delegation to govern the selection of a candidate to be recommended by the Delegation to succeed the Honorable John P. O'Keefe. Following a review of these amendments by myself and Mr. Joseph Wilson, of this Office, it is our opinion that these amendments may prove unworkable.

The Hartnett Amendment conflicts with the voting procedure established by the Resolution. Pursuant to the terms of the Resolution, if three candidates are in contention and two are tied in two consecutive ballotings, the two candidates that are tied would be dropped and the remaining candidate would be the nominee. Under the Hartnett Amendment, if three candidates are tied, you could not drop the two tied candidates, as balloting is to continue 'until there are two candidates left'. Under this amendment, as long as the ballots were consecutively the same, it could conceivably be possible for the balloting to become locked upon these three candidates without a nominee ever being elected. Under circumstances such as set out above, it could become virtually impossible to nominate a candidate. The Tillman Resolution would, therefore, be necessary to establish the procedure to be followed should the Delegation become locked upon three candidates.

However, a problem exists in that Section 14-1163 of the South Carolina Code of Laws, as amended, requires the nominee to be elected by a majority vote. A majority vote for the Charleston Delegation is nine. If the balloting has become deadlocked on three candidates and two candidates are tied and subsequently dropped, the winning candidate would most probably not have the required nine votes. Therefore, a nominee selected pursuant to the Tillman Amendment or the Resolution would not be legally elected under the statute. Another factor which I raise just for your consideration and which perhaps should be clarified, is that the Resolution itself does not expressly set out whether or not the procedure of dropping the two candidates who are tied would occur in any balloting after the first ballot. This is a question of interpretation which could perhaps become important under certain situations.

The Hartnett Amendment is possibly unworkable as it could conflict with the established voting procedure of the Resolution; the Tillman Amendment is, therefore, necessary in order to clarify the situation should the vote become locked on three candidates. However, a candidate winning the nomination by either the Tillman Amendment or the workings of the Resolution would more than likely not have the required nine votes. Therefore, it would be our opinion that the amendments may produce a possible conflict with each other and the Resolution itself. A further clarification of the voting procedure perhaps should be adopted in order to provide for the contingent situations that may arise under the present Resolution.

Yours very truly,

\*2 Treva G. Ashworth  
Assistant Attorney General

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