

1975 WL 29176 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 6, 1975

*1 Morris Rosen, Esquire
P. O. Box 27
Charleston, SC 29402

Dear Mr. Rosen:

In your capacity as attorney for the Charleston Election Commission, you have requested an opinion of this Office concerning certification of the Republican Party nominees in the upcoming election. You have informed me by telephone that the chairman of the Republican Party did not certify their candidates until after the statutory requirement of forty-five days had expired. You have requested an opinion as to whether or not the Charleston County Election Commission can waive the statutory requirement and proceed to certify the candidates for the election.

South Carolina Code of Laws, 1962, as amended, Section 23-400.15 states in part;

. . . the nominees in a party primary or party convention held under the provisions of this Title by any political party certified as such . . . shall be placed upon the appropriate official ballot for the election as candidates nominated by such petition or party by the office, commissioners or other authority charged by law with preparing such ballot if the names are certified to such officer, commissioner or other authority, as the case may be . . . for special and municipal elections, by at least twelve o'clock noon on the forty-fifth day prior to the date of the holding of such election, or if the forty-fifth day falls on Sunday, by twelve o'clock noon on the following Monday.

This statutory language requires the names of candidates to be certified forty-five days prior to the election. Discretion is not vested in the county election commission or any other body to waive these statutory requirements.

Therefore, it is the opinion of this Office that the county election commission cannot waive the statutory requirement and allow candidates to be certified following the forty-fifth day.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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