

1974 WL 28058 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 12, 1974

*1 Honorable Paul Foster
Chairman
Democratic Party of Greenville County
18 Beattie Place
Greenville, South Carolina 29601

Dear Mr. Foster:

An inquiry has been submitted as to whether an individual who has filed as a candidate for the House in a district in which he does not reside and who subsequently withdraws is a 'candidate' within the meaning of Section 23-396 of the Code of Laws. This section permits political parties to open filings for offices when a candidate dies or withdraws.

If such a candidate knowingly files for office in these circumstances and if a political party has knowledge of such disqualification, it is my opinion that such an individual is not a 'candidate' within the meaning of Section 23-396.

All of the circumstances must be considered, in my opinion, in determining whether the withdrawal of a candidate will bring about the application of the provisions of the statute. Only a court can make a final adjudication after consideration of such circumstances.

I find very little authority on the problem but the few cases indicate that, in most jurisdictions, the courts are lenient in consideration of provisions of law similar to Section 23-396.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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