

February 19, 2008

Marci Andino, Executive Director
South Carolina Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Ms. Andino:

In a letter to this office you referenced S.C. Code Ann. § 7-11-15 which states that

[i]n order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary or political party convention must file a statement of intention of candidacy between noon on March sixteenth and noon on March thirtieth as provided in this section.

You noted that there is no exception in this provision should March 16th or March 30th fall on a Saturday, Sunday or legal holiday. You have questioned whether filing is to be opened on March 16th and close on March 31st at noon, both dates of which are Sundays in 2008, in light of Rule 6 of the South Carolina Rules of Civil Procedure. Such rule states in part that

[i]n computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday....

It does not appear that such Rule would be applicable to your situation. As noted in Rule 1 of these Rules,

[t]hese rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81.

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See also: 86 C.J.S. Time Section 43 (“[t]he general rules as to the exclusion and inclusion of terminal Saturdays, Sundays, and holidays usually are applied in computing the time for taking any stated action in a judicial proceeding or in computing the time for the performance of an act which is required in appellate practice.”). I am unaware of any court case construing Rule 6 as applicable to election procedure.

As you pointed out, the quoted provision of Section 7-11-15 referenced above does not specifically provide for an exception to the specific March 16th and March 30th dates when such dates fall on a Saturday, Sunday or legal holiday. However, other provisions in that same statute do provide for extensions of time. As noted in that provision,

...the county executive committee of any political party with whom statements of intention of candidacy are filed must file, in turn, all statements of intention of candidacy with the county election commission by noon on the tenth day following the deadline for filing statements by candidates. If the tenth day falls on Saturday, Sunday, or a legal holiday, the statements must be filed by noon the following day. The state executive committee of any political party with whom statements of intention of candidacy are filed must file, in turn, all the statements of intention of candidacy with the State Election Commission by noon on the tenth day following the deadline for filing statements by candidates. If the tenth day falls on Saturday, Sunday, or a legal holiday, the statements must be filed by noon the following day..... (emphasis added).

Other statutes also provide for extensions of time in election matters when a designated period falls on a Saturday, Sunday or holiday. See, e.g., S.C. Code Ann. §§ 7-13-190, 7-13-350, 7-13-352 and 23-11-110(B)(1).

As set forth in 29 C.J.S. Elections, Section 114, it is generally held that “[a] statutory requirement as to the time for filing a declaration of candidacy is mandatory....” Similarly, as stated in a prior opinion of this office dated April 28, 2000,

[i]t is well settled that where an election statute imposes a deadline for filing petitions or certificates of candidacy, these deadlines must be met without fail. Election officials possess no discretion whatsoever.

Such opinion cited numerous cases in support of such statement including the decision in Vandross v. Ellisor, 347 F.Supp. 197 at 207 (D.S.C. 1972) where the court stated

[s]tatutes, however, which regulate the time for filing a declaration of candidacy are almost universally held to be mandatory; and a declaration that is filed too late is a nullity.

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Consistent with the above, in the opinion of this office, candidates seeking nomination by political party primary or political party convention must file a statement of intention of candidacy between noon on March 16th and noon on March 30th consistent with Section 7-11-15. As to any practical problems in the filing date falling on a Sunday, I am unaware of any prohibition to the various committees with whom the statements of intention of candidacy are to be filed receiving such on a Sunday in order to comply with such provision.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General