

October 31, 2007

The Honorable Nikki Randhawa Haley  
Member, House of Representatives  
Post Office Box 47  
Lexington, South Carolina 29071

Dear Representative Haley:

We received your letter dated October 26, 2007 requesting an opinion of this Office “concerning payment of filing fees for the office of President of the United States from the State Republican Party to the South Carolina Election Commission.” You state: “I am requesting a legal opinion from the Office of the Attorney General, the Honorable Henry McMaster, to determine whether the South Carolina Republican Party should use federal or non-federal funds to pay the candidate filing fees to the South Carolina Election Commission for the Office of President of the United States.” However, based on conversations with you and representatives from the South Carolina Republican Party (the “Party”), we understand you wish to know whether these filing fees must be paid from a particular account. For instance, you wish to know whether the money charged to candidates by the Party for participation in the primary must be used or can other funds held by the Party be used to pay the filing fees. Based on our analysis below, we do not find a provision of South Carolina law instructing the Party to pay the filing fees out of a particular account or set of funds. However, we caution that federal law may have implications that could impact the Party’s ability to use certain funds to pay such fees.

#### **Law/Analysis**

Section 7-11-20 of the South Carolina Code governs the conduct party primary elections and deals specifically with party presidential primaries. The Legislature recently amended this provision via act 81 of 2007. 2007 S.C. Acts No. 81. As amended, this provision states as follows with regard to presidential preference primaries:

(B)(1) Except as provided in item (2), a certified political party wishing to hold a presidential preference primary election may do so in accordance with the provisions of this title and party rules. However, notwithstanding any other provision of this title, the state committee of the party shall set the date and the hours that the polls will be open for the presidential primary election and the filing

requirements. If a party holds a presidential preference primary election on a Saturday, an absentee ballot must be provided to a person who signs an affirmation stating that for religious reasons he does not wish to take part in the electoral process on a Saturday.

(2) For the 2008 election cycle, if the state committee of a certified political party which received at least five percent of the popular vote in South Carolina for the party's candidate for President of the United States decides to hold a presidential preference primary election, the State Election Commission must conduct the presidential preference primary in accordance with the provisions of this title and party rules provided that a registered elector may cast a ballot in only one presidential preference primary. However, notwithstanding any other provision of this title, (a) the State Election Commission and the authorities responsible for conducting the elections in each county shall provide for cost-effective measures in conducting the presidential preference primaries including, but not limited to, combining polling places, while ensuring that voters have adequate notice and access to the polling places; and (b) the state committee of the party shall set the date and the filing requirements, including a certification fee. Political parties must verify the qualifications of candidates prior to certifying to the State Election Commission the names of candidates to be placed on primary ballots. The written certification required by this section must contain a statement that each certified candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications in the United States Constitution, statutory law, and party rules to participate in the presidential preference primary for which he has filed. Political parties must not certify any candidate who does not or will not by the time of the general election meet the qualifications in the United States Constitution, statutory law, and party rules for the presidential preference primary for which the candidate desires to file, and such candidate's name must not be placed on a primary ballot. Political parties may charge a certification fee to persons seeking to be candidates in the presidential preference primary for the political party. A filing fee not to exceed twenty thousand dollars, as determined by the State Election Commission, for each candidate certified by a political party must be transmitted by the respective political party to the State Election Commission and must be used for conducting the presidential preference primaries.

(3) The political party shall give written notice to the State Election Commission of the date set for the party's presidential preference primary no later than ninety days before the date of the primary.

(4) Nothing in this section prevents a political party from conducting a presidential preference primary for the 2008 election cycle pursuant to the provisions of Section 7-11-25.

Id. (emphasis added). According to this provision, state political parties wishing to conduct presidential preference primaries within the State must pay a filing fee. According to your letter, the State Election Commission set the filing fee for the 2008 Presidential Preference Primary at \$20,000 per candidate.

We note no provision contained in section 7-11-20 instructing parties as to what funds may be used to pay candidate filing fees. Moreover, in our research, we reviewed the provisions of chapter 13 of title 8 of the South Carolina Code governing campaign finances. In our review of these provisions, we found section 8-13-1308 of the South Carolina Code (Supp. 2006) regulates expenditures of campaign contributions. This provision states:

(A) Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee required to file a statement of organization pursuant to Section 8-13-1304(A) must file an initial certified campaign report within ten days of these initial receipts or expenditures. However, a candidate who does not receive or expend campaign contributions totaling an accumulated aggregate of five hundred dollars or more must file an initial certified campaign report fifteen days before an election.

(B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8-13-1370.

(C) Campaign reports filed by a candidate must be certified by the candidate. Campaign reports filed by a committee must be certified by a duly authorized officer of the committee.

(D)(1) At least fifteen days before an election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the candidate or committee for the

period ending twenty days before the election. The candidate or committee must maintain a current list during the period before the election commencing at the beginning of the calendar quarter of the election of all contributions of more than one hundred dollars and expenditures. The list must be open to public inspection upon request.

(2) A committee immediately shall file a campaign report listing expenditures if it makes an independent expenditure or an incurred expenditure within the calendar quarter in which the election is conducted or twenty days before the election, whichever period of time is greater, in excess of:

(a) ten thousand dollars in the case of a candidate for statewide office; or

(b) two thousand dollars in the case of a candidate for any other office.

(3) In the event of a runoff election, candidates or committees are not required to file another campaign report in addition to the reports already required under this section. However, records must remain open to public inspection upon request between the election and the runoff.

(E) Notwithstanding the provisions of subsections (B) and (D), if a pre-election campaign report provided for in subsection (D) is required to be filed within thirty days of the end of the prior quarter, a candidate or committee must combine the quarterly report provided for in subsection (B) and the pre-election report and file the combined report subject to the provisions of subsection (D) no later than fifteen days before the election.

(F) Certified campaign reports detailing campaign contributions and expenditures must contain:

(1) the total of contributions accepted by the candidate or committee;

(2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;

(3) the total expenditures made by or on behalf of the candidate or committee;

(4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

(G) Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, “anything of value” includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8-13-1308 in the same manner as a candidate or committee.

S.C. Code Ann. § 8-13-1308 (emphasis added).

Although this provision requires political parties to report contributions, it does not appear to restrict expenditures made by political parties. Furthermore, the only provision we found restricting a political party’s ability to expend funds is in section 8-13-1348 of the South Carolina Code (Supp. 2006). This provision prohibits, not only political parties, but candidates, committees, and public officials, from using campaign funds for personal expenses. S.C. Code Ann. § 8-13-1348. However, we do not find any provision under State law prohibiting political parties from using certain types of funds to pay candidate filing fees. Thus, we are of the opinion that State law does not mandate or instruct political parties as to what funds may be used to pay candidate filing fees as required by section 7-11-20. Nonetheless, we must clarify that our opinion is limited to the Party’s ability to make such payments under State law only and does not consider the impact of federal campaign finance laws.

### **Conclusion**

We do not find a provision of South Carolina law instructing the Party as to what funds are eligible to be used to pay the candidate filing fees required under section 7-11-20. In addition, we find no provision precluding the Party from expending a certain types of funds for this purpose. However, we strongly caution you that in the scope of this opinion, we have not considered the impact of federal campaign finance laws, which may impact the Party’s ability to expend certain types of funds to pay for candidate filing fees. Thus, we suggest the Party take such laws into consideration in determining which funds are appropriate to pay candidate filing fees. In addition,

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we advise the Party to contact the Federal Election Commission on this matter in order to gain an understanding of the impact of federal law.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General