

August 3, 2007

The Honorable Randy Scott
Member, South Carolina Senate
107 Cleveland Street
Summerville, South Carolina 29483

Dear Senator Scott:

We issue this opinion in response to your request for a follow-up opinion to our July 18, 2007 opinion. In your prior request, you asked that we address whether an individual can vote in the Democratic Presidential Primary and vote for a Republican in the general election. We found no provision under South Carolina law governing elections that prohibits an individual from taking such action. Op. S.C. Atty. Gen., July 18, 2008. You now ask that we address the question of whether an individual may vote in the Democratic Presidential Primary and also vote in the Republican Primary for state and local offices.

Law/Analysis

As we explained in our prior opinion, section 7-13-1010 of the South Carolina Code (1976) prohibits a voter from voting in more than one party's primary election, if both primaries are for the same general election. Op. S.C. Atty. Gen., July 18, 2007. To further explain the meaning of this provision, we look to two prior opinions of this Office. In an opinion issued on June 6, 1980, we considered whether a person voting in a special primary election conducted by a city's Democratic Party may vote in a regular primary conducted by the Republican Party. Op. S.C. Atty. Gen., June 6, 1980. In interpreting section 7-13-1010, we noted: "It appears that the prohibitory language in § 7-13-1010 is synonymous with the party primary elections 'preliminary to the same general or special election.'" Id. Finding the two primary elections to which the requester referred to be authorized under different statutes and determining that municipal elections are conducted independent of elections for federal, state, and county offices, we concluded "the regular primary elections and the special municipal primary election are not 'preliminary to the same general or special election.'" Id. Accordingly, we found section 7-13-1010 does not "prohibit a person voting in the special primary election of the Democratic Party of the City of Florence scheduled for June 10

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from also voting in any of the regular primary elections for Federal, State and county offices scheduled for the same date.” Id.

_____ We came to a similar conclusion in an opinion issued in 1984. Op. S.C. Atty. Gen., August 27, 1984. In that opinion, we considered whether a person who voted in one party’s primary in June may vote in another party’s primary in October for state senate. Id. We examined these facts under section 7-13-1010 and concluded: “Since the upcoming Senate primary will not nominate candidates for office filled by the June primary, § 7-13-1010 appears inapplicable.” Id.

Under the scenario presented in your letter, we do not believe section 7-13-1010 prevents a person voting in the Democratic Presidential Primary from voting in other non-presidential primaries. Presidential primaries are authorized by section 7-11-20 of the South Carolina Code and are conducted by the political party wishing to conduct the primary. All other primaries are authorized by other provisions of the Code and are conducted by the State Election Commission pursuant to section 7-13-15 of the South Carolina Code. Thus, these primaries are separate from one another and are conducted independent of one another. Therefore, accordance with our prior opinions, we do not believe they are primaries preliminary to the same general or special election. Accordingly, we do not believe a voter participating in the Democratic Presidential Primary is prohibited from voting in another primary for a state, local, or other federal office.

In further support of our finding we note an opinion issued by this Office in 1980. Op. S.C. Atty. Gen., January 15, 1980. In that opinion then Attorney General Daniel McLeod concluded a voter may vote in a Republican Presidential Primary and also in the scheduled Democratic Primary. Id. Attorney General McLeod relied in part on the fact that at the time of this opinion, presidential primaries were not conducted in accordance with South Carolina Law. Id. While this is no longer true, we find the other differences between presidential primaries and other primaries pointed out by Attorney General McLeod to be of interest. McLeod explained:

The [presidential primary] procedure does not nominate anyone and has no binding force or effect. Under the Election Laws of this State, voters do not cast ballots for Presidential candidates but, instead, cast ballots for Presidential electors who may be nominated by the various political parties. The [presidential] ‘primary’ is, therefore, not a legally recognizable election procedure and has no more force or effect than the response to a telephone inquiry by a poll taker as to the Presidential choice of individuals.

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Id. Accordingly, we believe this opinion further supports our finding that presidential primaries are distinguishable from other primaries. Therefore, a voter is not prohibited under section 7-13-1010 from voting in both the presidential primary of one party and primary of another party.

Very truly yours,

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Attorney General

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REVIEWED AND APPROVED BY:

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