

March 19, 2008

Chris Whitmire, Public Information Officer
South Carolina State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Whitmire:

In an email to this office you inquired as to the claim that the Spartanburg County Democratic Party did not organize correctly on the club level as required by S.C. Code Ann. § 7-9-50. The basis for this claim is that the clubs did not meet “at the usual place of meeting.” You stated that it is your understanding that the Spartanburg County Democratic Party chose to combine club meetings into several locations throughout the county so that multiple club meetings would be occurring at one location. Referencing such, you have asked the following questions:

1. Are you correct in advising that the State Election Commission has no authority to enforce the requirements of Section 7-9-50?
2. The Spartanburg County Republican Party Chairman wants to know who has enforcement authority. Our experience is that in similar situations in the past, parties have sought relief through courts of proper jurisdiction. Would we be correct in telling him the same in response to his question about enforcement of Section 7-9-50?

Section 7-9-50 states:

[t]he president or five members may call all special meetings of the club, except for reorganization, provided for in the succeeding paragraph. At least forty-eight hours' public notice of all special meetings must be given in a newspaper of general circulation in the area where the club is situated.

The clubs must meet for reorganization at the usual place of meeting, at the time and on the day as determined by the county committee no later than two weeks prior to the county convention. A notice must be published by the county committee once a week for two consecutive weeks not more than three weeks nor less than two weeks

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before the meeting date in a newspaper having general circulation in the county. If an existing club fails to reorganize on the day fixed, the county chairman may fix a day for the club to meet for reorganization by giving two weeks' notice.

S.C. Code Ann. § 7-9-10 provides in part that:

[p]olitical parties desiring to nominate candidates for offices to be voted on in a general or special election shall, before doing so, have applied to the State Election Commission (Commission) for certification as such. Parties shall nominate candidates of that party on a regular basis, as provided in this title, in order to remain certified. Any certified political party that fails to organize on the precinct level as provided by § 7-9-50, hold county conventions as provided by §§ 7-9-70 and 7-9-80, and hold a state convention as provided by § 7-9-100; that fails to nominate candidates for national, state, multi-county district, countywide, or less than countywide office by convention or party primary as provided by §§ 7-11-20, 7-11-30, and 7-13-40; and that fails to certify the candidates as provided by § 7-13-350 in at least one of two consecutive general elections held on the first Tuesday following the first Monday in November of an even-numbered year, or that fails to nominate and certify candidates in any other election which might be held within the period of time intervening between the two general elections, must be decertified by the State Election Commission. The party must be notified in writing of its decertification at the last address of record. If the notification of decertification is returned as undeliverable, it must be placed on file in the office of the State Election Commission and with the Secretary of State. (emphasis added).

As set forth by Section 7-9-10, a certified political party that fails to organize on the precinct level as provided by Section 7-9-50 is required to be decertified by the State Election Commission. However, this Office is unaware of any court decision that requires the remedy of decertification by the Election Commission. A prior opinion of this office dated July 2, 1998 noted that determining compliance with Section 7-9-10 would require a factual analysis, a matter beyond the scope of an opinion of this office. See also: Op. Atty. Gen. dated February 25, 2008 (“[a] complete review of all the facts involved would be necessary in order to respond to such concerns. However, such is beyond the province of this office in the issuance of an opinion in that this office in an opinion cannot determine facts or resolve factual issues.”). That opinion also noted that such an issue regarding Section 7-9-10 would need to be submitted to a court for a factual determination as to the issue involved. As a result, the matter of resolution of your questions with finality would similarly require review by the courts. Therefore, we can only suggest that an aggrieved party involved in the issue now presented to you regarding the Spartanburg County Democratic Party submit the matter to a court for its review.

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With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General