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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

January 13, 1998

James F. Hendrix, Executive Director
Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Jim,

As a follow up to my letter to you of January 6, 1998, you have raised in a telephone conversation if there would be any prohibition to one candidate being the nominee of two parties both holding conventions, as opposed to primaries, to nominate candidates.

Candidates nominated by convention do not sign an oath as primary candidates are required to do by statute. S.C. Code Ann. §7-11-210 (Supp. 1996). However, the same basic problems would arise for both a convention and a primary candidate.

Section 7-11-10 states in part that

[n]ominations for candidates for the offices to be voted on in a general or special election may be by political party primary, by political party convention or by petition; provided, no person who was defeated as a candidate for nomination to an office in a party primary or convention shall have his name placed on the ballot for the ensuing general or special election

If a candidate allows his name to be put forward in two or more party conventions he would have to win in each of these conventions to avoid the statutory prohibition of a candidate

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offering after being defeated. ¹ Should a candidate be the nominee of one party's convention but lose the nomination in another party's convention it could become an issue for the courts as to whether that person could be placed on the ballot. I would presume the statutes would allow the candidate's name to be placed on the ballot for the political party's convention that the candidate did win; however, that issue is not free from doubt.

As stated in my previous letter, the political parties would have to agree to one person being a candidate for more than one political party. This would be true regardless of whether the nomination is made by primary or convention method. The language of the statutes envisions a candidate affiliating with one party and offering to be a candidate in that one party. For example, the statutes set out how a nominee can be replaced if the nominee for that party dies or withdraws, §7-11-15, 7-11-50, see also, 7-11-10. Section 7-11-15 discusses the statement of candidacy that all candidates must fill out. ² This statute provides in part that

[i]n order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party convention must file a statement of intention of candidacy ...

(1) Candidates seeking nomination for a state-wide, congressional, or district office which included more than one county shall file their statements of intention of candidacy with the State Executive Committee of their respective party.

(2) Candidates seeking nominations for the State or House of Representatives must file their statements of intention of candidacy with the County Executive Committee of their respective party ...

(3) Candidates seeking nomination for a countywide or less than countywide office shall file their statements of intention of candidacy with the County Executive Committee of their respective party.

(Emphasis added)

¹ This would also present a problem for a candidate offering in two primaries.

² The candidates pledge that primary candidates sign is an additional requirement for candidates offering in a primary. S.C. Code Ann. §7-11-210 (Supp. 1996).

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Even the statement of intention of candidacy envisions candidacy to be offered only in one party. The instructions inform the candidate to file with the "... Executive Committee of your political party." The statement itself has the following first statement "I declare my intention to seek nomination by _____ (Name of _____ Party ... for the office of _____." political party) (Name of office sought)

Although a convention candidate would not violate the oath of a primary candidate, both methods of election would raise the same basic issues and problems that were not addressed or envisioned by the statutes. Although offering as a candidate in two parties is not absolutely prohibited by statute, it does raise potential problems for the parties and the candidates.

This letter is an informal opinion and represents only the opinions of the undersigned attorney. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of formal opinions.

Very truly yours,



Treva Ashworth
Deputy Attorney General

TA:bvc