



ALAN WILSON  
ATTORNEY GENERAL

March 6, 2014

Marci Andino, Executive Director  
South Carolina Election Commission  
P.O. Box 5987  
Columbia, S.C. 29250

Dear Ms. Andino,

You seek an opinion of this Office concerning the certification and nomination of candidates for countywide and less than countywide offices by political parties in light of the recent enactment of the Equal Access to the Ballot Act (the "Act") of 2013.<sup>1</sup> By way of background, you state:

The State Election Commission (SEC) is preparing to accept candidate filings and needs legal advice to clarify the impact of the Equal Access to the Ballot Act (S.2). The Act requires the appropriate election commission (state or county) to accept candidate filing information. As you are aware, this was a process previously conducted by the political parties.

The Act revised various sections of the S.C. Code of Laws related to filing, certification, and conduct of political party conventions. Section 7-11-15 no longer identifies the specific duties of the state and countywide executive committees, and Section 7-11-30 no longer identifies the specific offices nominated by each of the state and county political party conventions. These changes along with changes to Section 7-11-210 and existing language in Sections 7-13-40 and 7-13-350 have caused the following questions to be raised by county election commissions and political parties:

Generally:

- Does the state or county political party certify candidates for countywide and less than countywide offices?
- For parties that nominate by convention, does the state or county convention nominate candidates for countywide and less than countywide offices?

Specifically:

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<sup>1</sup> See Act No. 61 of 2013.

- If a party is not organized in a county, can a candidate file [sic] seek the nomination of that party for a countywide and less than countywide office? If so, does the state party certify the candidates?
- If a party that nominates by convention is not organized in a county, can the state convention nominate candidates for a countywide or less than countywide office?

### Law/Analysis

As your questions ask us to interpret numerous statutory provisions found in Title 7 of the S.C. Code (1976, as amended) concerning election laws, a number of principles of statutory construction are applicable here. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). In addition, a court "may ... consider the title or caption of an act in determining the intent of the Legislature." McInnis v. McInnis, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002).

The certification of the names of candidates to be placed on ballots is specifically addressed in two statutory sections. The first, § 7-13-40, concerns the certification of names to be placed on primary ballots and currently states as follows:

In the event that a party nominates candidates by party primary, a party primary must be held by the party and conducted by the State Election Commission and the respective county election commissions on the second Tuesday in June of each general election year, and a second and third primary each two weeks successively thereafter, if necessary. **Written certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary** to the State Election Commission or the county election commission, whichever is responsible under law for preparing the ballot, not later than twelve o'clock noon on April fifth, or if April fifth falls on a Saturday or Sunday, not later than twelve o'clock noon on the following Monday. Political parties nominating candidates by party primary must verify the qualifications of those candidates prior to certification to the appropriate election commission of the names of candidates to be placed on primary ballots. The written verification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office for which he has filed. **A political party must not certify any candidate** who does not or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which the candidate has filed, and

such candidate's name shall not be placed on a primary ballot. The filing fees for all candidates filing to run in all primaries, except municipal primaries, must be transmitted by the respective political parties to the State Election Commission and placed by the executive director of the commission in a special account designated for use in conducting primary elections and must be used for that purpose. The filing fee for each office is one percent of the total salary for the term of that office or one hundred dollars, whichever amount is greater.

§ 7-13-40 (Supp. 2013) (emphasis added). Although § 7-13-40 was amended by the 2013 Act, these changes are irrelevant as to the issue of whether the names of candidates for countywide and less than county wide offices to be placed on primary ballots are certified by state or county parties.<sup>2</sup>

In addition, the certification of the names of nominees, whether nominated via party primary or convention, to be placed on general election ballots is addressed in § 7-13-350 which states:

(A) Except as otherwise provided in this section, the nominees in a party primary or party convention held under the provisions of this title by any political party certified by the commission for one or more of the offices, national, state, circuit, multi-county district, countywide, less than countywide, or municipal to be voted on in the general election, held on the first Tuesday following the first Monday in November, must be placed upon the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot **if the names of the nominees are certified, in writing, by the political party chairman, vice-chairman, or secretary** to the authority, for general elections held under § 7-13-10, not later than twelve o'clock noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than twelve o'clock noon on the following Monday; and for a special or municipal general election, by at least twelve o'clock noon on the sixtieth day prior to the date of holding the election, or if the sixtieth day falls on Sunday, by twelve o'clock noon on the following Monday. Political parties nominating candidates by primary or convention must verify the qualifications of those candidates prior to certification to the authority charged by law with preparing the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which he has filed. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which he has filed shall not be nominated and certified, and such candidate's name shall not be placed on a general, special, or municipal election ballot.

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<sup>2</sup> The previous version of § 7-13-40 (Supp. 2000) likewise provided that political parties are responsible for certification without any further clarification. The 2013 Act simply changed the date by which certification must be made from April 9th to April 5th and substituted "[p]olitical parties must not accept the filing of any candidate who ..." with "[a] political party must not certify any candidate who ...."

(B) Candidates for President and Vice President must be certified not later than twelve o'clock noon on September tenth to the State Election Commission, or if September tenth falls on Sunday, not later than twelve o'clock noon on the following Monday.

§ 7-13-350 (Supp. 2003) (emphasis added). This section was unaffected by the 2013 Act.

As emphasized above, both sections simply state that the certification of candidates or nominees to be placed on primary or general election ballots is to be made by a "political party"; neither section contains any language indicating whether the state or county party is responsible for certifying candidates or nominees for certain offices. Thus, in both sections the Legislature appears to have left the open the question as to whether the state or county party certifies local candidates.

We note § 7-1-20 provides that, "unless ... plainly inconsistent with the context," the term "political party" must be construed as meaning "a political party, organization, or association certified by the State Election Commission as provided in this title." § 7-1-20(7) (Supp. 2010). The only political parties certified as such by the SEC are statewide parties. Thus, § 7-1-20(7) seems to suggest that the term "political party" as used in § 7-13-40 should be construed as referring to a state party certified by the SEC and not a county party.

However, the definition of "political party" as stated in § 7-1-20(7) dates back to 1950.<sup>3</sup> Despite this definition and ambiguities in our elections laws as to the party organizational level responsible for certifying candidates, it is our understanding county parties have historically certified candidates for certain local offices. As we stated in a 1966 opinion concerning the certification of local candidates by county organizations of the Republican Party:

**For purposes of definition, political parties are defined as those parties properly certified as such by the Secretary of State. Section 23-5, 1962 South Carolina Code of Laws. The only Republican party so certified is the "South Carolina Republican Party." The various county organizations of the Republican party in South Carolina are not separate political parties under the above definition. They are integral parts of the "Republican Party of South Carolina," and when the county party organization certifies candidates for local county offices they are being certified as candidates of the "Republican Party of South Carolina" and not, for example, the Richland County Republican Party....**

Op. S.C. Att'y Gen., 1966 WL 8582 (Aug. 9, 1966) (emphasis added).

In fact, a review of the previous and current versions of § 7-11-15 concerning the qualifications of candidates seeking nomination by party primary or convention seems to indicate that the Legislature

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<sup>3</sup> See Act No. 858 of 1950 ("Political party" means a political party, organization or association certified as such by the Secretary of State as and in the manner provided for in this act."). Pursuant to Act No. 346 of 1986, the Secretary of State was replaced by the State Election Commission as the entity responsible for certifying political parties.

had this same understanding of the historical role of county parties in certifying local candidates. Prior to the 2013 Act, § 7-11-15 stated, in part:

In 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.

(1) Candidates seeking nomination for a statewide, congressional, or district office that includes more than one county must file their statements of intention of candidacy with the state executive committee of their respective party.

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy with the county executive committee of their respective party in the county of their residence. The county committees must, within five days of the receipt of the statements, transmit the statements along with the applicable filing fees to the respective state executive committees. However, the county committees must report all filings to the state committees no later than five p.m. on March thirtieth. **The state executive committees must certify candidates pursuant to Section 7-13-40.**

(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.

....

§ 7-11-15 (Supp. 2003) (emphasis added). The section went on to require the state or county party with whom a candidate's SIC was filed to then file such SICs with the State Election Commission or county election commission, respectively. Id.

As your letter indicates, the effect of the 2013 amendments to § 7-11-15 was, *inter alia*, to substitute the SEC or respective county election commission for the state or county party as the appropriate entity with which candidate filings are made. The current version states, in part:

(A) In 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 and party pledge and submit any filing fees between noon on March sixteenth and noon on March thirtieth as provided in this section.

(1) Except as otherwise provided in this section, candidates seeking nomination for a statewide, congressional, or district office that includes more than one county must file their statements of intention of candidacy,

and party pledge and submit any filing fees with the State Election Commission.

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy and party pledge and submit any filing fees with the county election commission in the county of their residence. **The state executive committees must certify candidates pursuant to Section 7-13-40.**

(3) Candidates seeking nomination for a countywide or less than countywide office shall file their statements of intention of candidacy and party pledge and submit any filing fees with the county election commission in the county of their residence.

§ 7-11-15(A) (Supp. 2013) (emphasis added). Subsection (B) of § 7-11-15 now provides that the election commission with whom a candidate's SIC, party pledge, and filing fees are filed must provide copies of such filings with "the appropriate political party executive committee ...." § 7-11-15(B).

As emphasized in both versions of § 7-11-15 above, the Legislature specified that candidates seeking the nomination of a party for a position in the General Assembly must be certified by state parties pursuant to § 7-13-40, but omitted any reference to the party organizational level responsible for certifying county and less than countywide candidates. This suggests the Legislature presumed, as would be reasonable, that candidates for offices spanning more than one county should be certified by state parties, while the certification of candidates for countywide and less than countywide offices may be conducted by county parties. Since some, but not all, members of the General Assembly hold offices spanning more than one county, the Legislature likely found it necessary to specify that candidates for such offices should be certified by state parties.

Furthermore, we believe the omission of any reference in § 7-11-15 to the party organizational level responsible for certifying candidates for local office suggests the Legislature, recognizing that some but not all parties are organized at the county level, intended to leave state parties with the discretion to determine whether such candidates should be certified by the state party or the respective county parties, if any. We believe this construction of § 7-11-15 to be consistent with the general intent behind the 2013 Act which, as indicated by its title ("The Equal Access to the Ballot Act"), was to simplify the processes by which a person's name is placed on a ballot. Under a strict reading of the previous version of § 7-11-15 (Supp. 2003), it was impossible for candidates seeking local office to be nominated by a party for which there was no county organization because such candidates were required to file their SICs with their party's respective county executive committee. This is no longer an issue under current § 7-11-15(A)(3) as candidates for local office are now required to file with the election commission in their respective county. Thus, a candidate seeking local office may now be nominated by a political party regardless of whether such party is organized at the county level. This construction of current § 7-11-15 not only furthers the general intent of the 2013 Act but is also consistent with § 7-11-20(A) which allows parties to develop their own rules concerning the nomination of candidates to the extent such rules do not

conflict with state or federal law.<sup>4</sup> Accordingly, we believe the Legislature likely intended to leave state parties with the discretion to determine whether candidates for countywide or less than countywide offices should be certified by the state party or the respective county party, if one so exists.

With regards to your questions concerning parties that nominate candidates by convention, § 7-11-30(C) currently states:

(C) A political party nominating candidates by party convention shall nominate the party candidates and make the nominations public not later than the time for certifying candidates to the authority charged by law with preparing ballots for the general or special election.

§ 7-11-30(C) (Supp. 2013).

As your letter indicates, § 7-11-30 previously specified that candidates for county offices were to be nominated by county convention, stating:

If a party nominates candidates by conventions, the state convention shall nominate the party's candidate for Governor, Lieutenant Governor, and all other statewide offices and United States Senators, members of Congress, and circuit solicitors, and **the county conventions shall nominate the party's candidates for all county offices....**

§ 7-11-30 (Supp. 1984) (emphasis added).

It is our understanding that most, if not all, of the parties in this state which nominate by convention are not locally organized in every county. Thus, under a strict reading of the previous version of § 7-11-30, it would have been impossible for a candidate for county office to be nominated by party convention if such party was not organized at the respective county level. Consistent with the general intent of the 2013 Act previously mentioned, we believe the removal of any language in § 7-11-30 specifying whether state or county conventions nominate candidates for certain offices was intended to allow a candidate for county office to be nominated by party convention regardless of whether such party is organized at the county level. With all of this in mind, the most logical interpretation of § 7-11-30(C) (Supp. 2013) is that the state party should nominate all of its candidates for office, including county offices.

### Conclusion

For the reasons stated herein, we believe the Legislature most likely intended to leave state political parties with the discretion to determine whether candidates for countywide and less than

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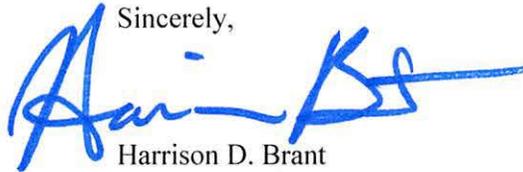
<sup>4</sup> See § 7-11-20(A) (Supp. 2007) ("**Party conventions or party primary elections held by political parties certified as such by the State Election Commission pursuant to the provisions of this title to nominate candidates for any of the offices to be filled in a general or special election must be conducted in accordance with the provisions of this title and with party rules** not in conflict with the provisions of this title or of the Constitution and laws of this State or of the United States.") (emphasis added).

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countywide offices should be certified for purposes of §§ 7-13-40 and -350 by the state party or the respective county parties, if one so exists. However, due to the absence of any legislative provision expressly designating the party organizational level responsible for certifying such candidates, and in consideration of the costly litigation in 2012 which ultimately resulted in hundreds of candidates being thrown off ballots, we are hesitant to say with any certainty whether a court faced with this issue would agree. Until the matter is specifically addressed by a court or express legislation, we advise out of an abundance of caution that candidates for countywide and less than countywide offices should be certified by state parties *and*, if one so exists, the respective county party. In the event a party is not organized at the county level, we believe the state party may certify candidates or nominees for purposes of §§ 7-13-40 and -350.

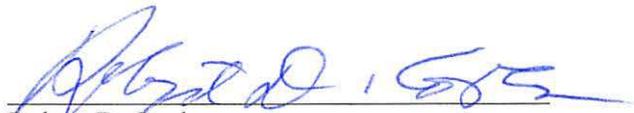
With regards to your questions specifically concerning parties that nominate by convention, it is our opinion based on § 7-11-30(C) as amended by the 2013 Act that candidates for county offices should be nominated by state convention regardless of whether the party is organized at the county level.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
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