

1984 S.C. Op. Atty. Gen. 246 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-105, 1984 WL 159912

Office of the Attorney General

State of South Carolina

Opinion No. 84-105

August 27, 1984

\*1 James B. Ellisor  
Executive Director  
State Election Commission  
2221 Devine Street, Suite 105  
Columbia, South Carolina 29250

Dear Mr. Ellisor:

You inquire whether persons who voted in one primary in June may vote in another party's primary in October for state Senate. Enclosed are opinions by former Attorney General McLeod which answer your question.

[Section 7-13-1010 of the Code](#) requires persons voting in a primary to pledge not having voted before ‘. . . in any party's primary election . . . for any vacancy for which this primary is being held.’ (Emphasis added.) In 1976 this Office in construing the statute, stated that one voting in Party A's June primary to nominate candidates for the general election cannot thereafter vote in any primary, run-off of special election held by another party to nominate candidates for the same general election. That opinion further notice however, that if for any reason a primary is held by Party A to nominate candidates ‘for an office that was not filled by the time primary,’ the person who had voted in Party B's primary in June could vote in Party A's subsequent special primary. Op. Atty. Gen., Sept. 17, 1976, citing [Gordon v. Ex. Comm. 335 F.Supp. 166 \(D.S.C. 1971\)](#). See also, Op. Atty. Gen., Jan. 23, 1980.

Since the upcoming Senate primary will not nominate candidates for an office filled by the June primary, § 7-23-1010 appears inapplicable. While true that if not for the delay in implementation of Senate reapportionment the office of Senator would have been on the June ballot, it is unacceptable that it was not. Based then upon the 1975 opinion stating ‘if for any reason’ such is the case, § 7-13-1010 by its terms does not prohibit voting in another party's primary for the Senate.

While the law is technically deficient in this unique circumstance, its purpose is clear—public policy condemns political party raiding. The U. S. Supreme Court has recognized that prevention of political party raiding is an important state interest, [Rosario v. Rockefeller, 410 U.S. 752 \(1973\)](#). The General Assembly may thus wish to amend the statute to correct its deficiencies.

Sincerely,

Patricia D. Petway  
Assistant Attorney General

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