

1980 WL 120922 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1980

*1 The Honorable John W. Jenrette, Jr.
Representative
Sixth District
House Office Building
Washington, D.C. 20510

Dear Representative Jenrette:

You have inquired as to the method by which a candidate for Congress may be substituted in the place of your candidacy and the legal consequences of such a withdrawal of candidacy should you desire to make such a withdrawal. The problem primarily stems from an apparent conflict between two Code Sections of the 1976 Code of Laws for South Carolina, both of which concern withdrawal of a candidacy.

Section 7-13-390 provides for the withdrawal of a candidate from a race after his certification only if requested by the candidate at least thirty days before the election.

Section 7-11-50, as amended in 1968 and 1978, provides essentially:

If a party nominee dies, becomes disqualified after his resignation or resigns his candidacy for legitimate nonpolitical reasons and sufficient time does not remain to nominate a nominee to enter a special election, the appropriate executive committee may nominate a nominee for such office who shall be certified to the proper authority.

'Legitimate nonpolitical reason' means:

- (a) Reasons of health which must be authorized by the written opinion of a medical doctor that continuance of candidacy would be harmful to the health of the candidate.
- (b) Family crisis which includes circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business.
- (c) Substantial business conflict which includes the policy of an employer prohibiting employees from becoming candidates for office and an employment which would result in the ineligibility of the candidate or which would impair the capability of the candidate to carry out the function of the office being sought.
- (d) A 'legitimate nonpolitical reason' not covered by (a), (b) and (c), above, in which case the candidate shall have the strict burden of proof for his reason.

An affidavit must be submitted to the proper authority by the candidate and no substitution shall be authorized except for death or disqualification unless the appropriate authority determines that 'legitimate nonpolitical reasons' are shown.

Action by the authority must be made within ten days after submission of the affidavit.

Where the nominee is unopposed, each certified political party may nominate a candidate for the office involved.

If the event [which is construed by this Office to mean the death, disqualification or withdrawal for a legitimate nonpolitical reason of an unopposed candidate] occurs more than forty-five days before the election, certification must be made thirty days before the election. If the event occurs less than forty-five days before the election, certification must be made fifteen days prior to the election.

The first of the statutes summarized above (Section 7-13-390), which has remained unchanged since its original enactment, prohibits withdrawal of candidacy later than thirty days before an election.

*2 The second cited statute, which has undergone extensive amendments since its enactment, provides for withdrawal of candidacy without time limitation but only where death, disqualification or resignation of candidacy for a legitimate nonpolitical reason exists. Where an unopposed candidate validly withdraws less than forty-five days before an election, the election will be postponed for one month. This postponement is operative only when there is an unopposed candidate who withdraws. The precise point has been heretofore considered by this Office consonant with the above conclusion. 74 ATT'Y. GEN. OP. 288. The conclusions stated in that opinion are herewith reaffirmed. This proviso would not apply should you resign your candidacy as you, of course, do have opposition in the House race.

Construing the two statutes together, it seems clear that normally a candidate cannot withdraw his candidacy within thirty days of an election; but because of the later adopted provisions of law, withdrawal at any time may be made in certain specified situations, i.e., death, disqualification or legitimate nonpolitical reason.

A second question concerns the problem of where the affidavit requesting the resignation of a candidate for nonpolitical reason should be filed as this statute does not mention a place for a person running for the United States Congress to file an affidavit. This is an apparent oversight, as there appears no reason to assume that the General Assembly would pass an act intentionally providing a place for all other officers to file, including the United States Senate, and purposely omit the office of United States House of Representatives. As the ballots for United States House of Representatives are printed by the State Election Commission, it is the conclusion of this Office that a candidate for the United States House of Representatives should file his affidavit with the State Election Commission.

Therefore, should you decide to resign from your candidacy and it is accepted by the proper authority as a resignation based on a legitimate nonpolitical reason, the party could substitute a new nominee for this office and the election would proceed as scheduled.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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