

1979 WL 42910 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 6, 1979

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1338 Main Street
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Dear Mr. Manning:

Mr. McLeod has referred your recent letter to me for reply. You have stated that the Republican Party is giving some consideration to the possibility of having presidential preferential elections in South Carolina. You have asked the following questions:

(1) Is there any statute expressly authorizing a party to conduct such an election? In my research, I have found none.

There is no statute which would expressly authorize a political party to conduct a presidential preference election.

(2) Is it necessary to have express legislative authorization for the conduct of such an election by a political party?

(3) If such an election may be held by a political party without express legislative authority, may it be conducted as part of the primary election held pursuant to 1976 Code Section 7-13-40? Stated otherwise: Is the primary election provided for by Section 7-13-40 to be used exclusively for the purposes set out in that section, or may the conduct of the authorized primary election be used to reach a decision on some other matter, such as on the party's presidential preference?

I have not found any express authority on these questions. However, my research has indicated that presidential preferential elections are generally conducted pursuant to statute. 29 C.J.S. Elections, § 111(1) n.72, p.267. These preferential elections then morally bind the delegates elected pursuant to the preferential vote to vote for that presidential candidate at the national convention. 29 C.J.S. Elections, supra. It is possible that the political parties may have the authority to include a presidential preference election in the primary without legislation much as they have with primary elections of magistrates. However, there is no established filing or qualifying procedure for candidates who should desire to be on the presidential ballot. Additionally, S. C. Code of Laws, 1976, Section 7-13-40 limits primary elections to statewide, congressional, district, countywide and less than countywide. There is no express or implied authorization for a preferential election on a national level. Therefore, in the absence of legislation, it would appear that it would be preferable to have express legislative authority authorizing a presidential preference election.

However, in order to receive a definitive opinion, it may be advisable for a suit to be instituted on behalf of the party to determine the questions that you have presented.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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