

1978 WL 35009 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 1, 1978

*1 Mr. James B. Ellisor
Executive Director
State Election Commission
P. O. Box 5987
Columbia, SC 29250

Dear Mr. Ellisor:

This letter is to confirm our conversation of July 31, 1978. You have informed me that Senator Harris is thinking of resigning prospectively from his Senate seat. The question has been raised if a resignation can be tendered now to become effective at some future date; and, if the election can be called now for a date after the effective date of his resignation.

There would be no prohibition in a person tendering a prospective resignation. 63 Am.Jur.2d Public Officers and Employees, § 165 states that ‘ . . . a resignation to take effect on a certain day operates in the first moment of that day . . . ’ See also Sections 136 and 163; 29 C.J.S. Elections, § 86(2).

An election cannot be called until after a vacancy exists. 29 C.J.S. Elections, § 70. Therefore, the actual election cannot be set for a date prior to the actual date that the resignation would be effective. However, this would apparently not prohibit the political parties from conducting primaries or conventions for candidates prior to the date set for the election. 1964-65 Att’y. Gen. Ops. 20, Opinion No. 1787; 1969-70 Att’y. Gen. Ops. 322, Opinion No. 3032.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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