

1976 WL 30555 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 17, 1976

*1 Mr. Donald L. Fowler
Chairman
Democratic Party of South Carolina
2801 Devine Street
Columbia, SC 29250

Dear Mr. Fowler:

Mr. McLeod has referred your recent letter to me concerning whether or not persons who have voted in one party's primary, may vote in another party's primary. Specifically, you have raised the following questions:

(1) May officers of the Republican Party (or other political parties) and/or Republican office holders who have participated in Republican Party affairs, including precinct meetings, county conventions, and/or the State Convention in which matters relating to the nominating process were dealt with even though the Republicans used a primary nominating procedure, vote in the Democratic Primary held during the same year?

Yes. South Carolina Code of Laws, 1962, as amended, Section 23-400.71 establishes the pledge each voter takes before voting in a primary. The voter by taking this oath makes the following pledge

I do solemnly swear or affirm that I am duly qualified to vote at this primary election and that I have not voted before at this primary election or in any other party's primary election or officially participated in the nominating convention for any vacancy for which this primary is being held. (emphasis added)

By taking this pledge, all electors, be they party officers, office holders or just electors, are stating that they have not officially participated in a convention held to nominate candidates. Therefore, any person who has attended a political party's nominating convention and votes or otherwise in some capacity officially participates in this nominating convention, may not vote in a primary of another party.

However, a different situation exists if the political party is holding a primary and the person merely participates in the convention and meeting held prior to that primary. Any person who has merely attended the meetings and convention of a party which is holding a primary would not be prohibited from voting in the primary of another party.

(2) May persons who voted in the regular June primary held and conducted by the Republican Party vote in subsequently held special Democratic Primaries during the same year (namely 1976)?

Section 23-400.71 was amended after the 1971 case of [Gordon v. Executive Committee of the Democratic Party of the City of Charleston, 335 F. Supp. 166 \(1971\)](#). In that case the court found that the former provisions of the oath which prohibited a person who had voted in one party's primary from voting in another party's primary for one year, to be unconstitutional. The court sustained the remaining provisions of the oath and stated

Excising its unconstitutional limitation, Section 400.71 would, by the terms of the oath thereby required, only deny to the voter the right to participate in two primary elections preliminary to the same general or special election. (emphasis added) [Gordon, supra](#), at 169.

*2 Therefore, the court has interpreted this oath as denying a person the right to vote in the primaries of two parties held to elect nominees for the same election. Under the provisions of the oath, a person who had voted in the June primary in one political party would be prohibited from voting in the primary run-off or special election of another party held to nominate candidates for the same general election. See also South Carolina Code of Laws, 1962, as amended, Section 23-400.79. However, this same person could vote in any subsequent or special election, which was unrelated to the primary and run-off referred to above, held during the same year of either party.

In summary, if a person votes in the Republican primary held in June to nominate candidates for the general election, he cannot thereafter vote in any primary, run-off or special election (such as was occasioned by the special election held on August 10, 1976, to fill the vacancy created by the death of the Democratic Party nominee for Solicitor in Lexington County) held by the Democratic Party to nominate candidates for the same general election. However, if for any reason a primary is held by the Democratic Party to nominate candidates for an office that was not filled by the June primary and subsequent November election, the person who had voted in the Republican primary in June could vote in the subsequent special primary held by the Democratic Party. As an example, in Gordon, supra, persons who had participated in a special February 20, 1971, Republican primary for the selection of a party nominee to run in a special general election to the United States House of Representatives were allowed by the court to vote in the June 8, 1971, Democratic primary held to select a nominee for Mayor of Charleston to run in the general election.

As you phrased your question in terms of Republicans voting in Democratic primaries, I have utilized the same terminology in answering. Of course, this opinion applies to any person voting in the political primary of one party and subsequently attempting to vote in the primary of any other political party of this State.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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