

1974 S.C. Op. Atty. Gen. 219 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3822, 1974 WL 21327

Office of the Attorney General

State of South Carolina

Opinion No. 3822

July 18, 1974

*1 Mr. Donald L. Fowler
Chairman
Democratic Party of South Carolina
2825 Millwood Avenue
Columbia, South Carolina 29250

Dear Mr. Fowler:

This letter is to confirm our telephone conversation concerning primary run-offs.

You have asked whether or not you would include the third or fourth candidate until you have an aggregate of 50% when no two candidates receive a combined total of 50% of the votes. South Carolina Code of Laws, 1962, as amended, Section 23-397 states in part.

A second primary . . . shall be held two weeks after the first . . . At such second primary the two candidates among those who do not withdraw their candidacies and who received more votes in the first primary than any other remaining candidate alone shall run for any one office . . .

And Section 23-496 states

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate.

Therefore, only the top two candidates would run in the second primary regardless of a lack of majority between them.

Additionally you have asked if an automatic recount applies if the difference between the two candidates who are respectively second and third in the primary is less than one percent. Section 23-476.3 states

Mandatory recount in certain elections.—Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidates not declared so nominated or elected shall be not more than one per cent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

Therefore, the automatic recount provision only applies in situations where the first and second candidates are within one per cent of each other in the first primary and not for any subsequent candidates.

Sincerely,

Treva Ashworth
Assistant Attorney General

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