

1974 S.C. Op. Atty. Gen. 288 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3867, 1974 WL 22442

Office of the Attorney General

State of South Carolina

Opinion No. 3867

October 15, 1974

***1** The 1968 Amendment to Section 23–266 provides for reopening of nominations where a nominee dies, withdraws, or is disqualified; however, the election date is to be postponed only when the nominee is unopposed and the vacancy occurs within 45 days of the election.

Member, House of Representatives

In your letter of October 10, 1974, you requested that we advise you concerning Section 23–266 of the South Carolina Code of Laws, as amended. See also, 55 STAT. Act No. 955, Section 1 at 2317–2318 (1968). That statute provides:

If a party nominee dies, withdraws or otherwise becomes disqualified after his nomination and sufficient time does not remain to hold a convention or primary to fill the vacancy or to nominate a nominee to enter a special election, the respective State or county party executive committee may nominate a nominee for such office, who shall be duly certified by the respective county or State chairman. Provided, that where such a party nominee is unopposed each political party registered with the Secretary of State shall have the privilege of nominating a candidate for the office involved. If the event occurs forty-five days or more prior to the election such nomination must be certified not less than thirty days prior to the election. If the event occurs less than forty-five days prior to the election such office shall not be voted on until the first Tuesday in the month following such election and such nomination must be certified not less than fifteen days prior thereto.

You ask whether or not the General Election must be postponed when an opposed candidate either dies, withdraws, or otherwise becomes disqualified less than forty-five days prior to the date on which the General Election is to be conducted.

Prior to the 1968 amendment to Section 23–266, when a party nominee, who was unopposed, died, withdrew or otherwise became disqualified prior to the General Election but after the time had closed for the nomination of candidates, there was no statute which authorized the nomination of candidates to oppose the nominee that would be substituted for the dead, withdrawn, or disqualified candidate. See, Opinion No. 2136, 1966 OPS.ATTY.GEN. 263. See also, CODE OF LAWS OF SOUTH CAROLINA, Section 23–266. The 1968 amendment to Section 23–266 of the Code was to permit the nomination by political parties or by petition of nominees to a given office when an unopposed nominee of a political party had died, withdrawn or otherwise had become disqualified. By that amendment, a postponement of the election would be required only when a candidate who was unopposed either died, withdrew or became disqualified.

Our conclusion is supported by the comment which appears directly below the amendment in the Acts and Joint Resolutions. That comment reads:

This section has been amended so as to provide for the reopening of nominations where an unopposed nominee dies, withdraws or otherwise becomes disqualified. The amendment also provides for the postponement of the election for such office where this condition occurs within forty-five days of the election. [Emphasis added.] Id. at 2318.

***2** Obviously, the words “this condition” refer to the death, withdrawal, or disqualification of an unopposed nominee and to nothing else.

It is the opinion of this office, therefore, that where an opposed candidate dies, withdraws or otherwise becomes disqualified less than forty-five days prior to the General Election, that election is not to be postponed but is to be conducted on the designated date; only when the nominee of a political party is unopposed in the General Election is postponement required.

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