1998 WL 62941 (S.C.A.G.)

Office of the Attorney General
State of South Carolina

***1** January 6, 1998

James F. Hendrix
Executive Director

Dear Jim,

You have raised various questions regarding election issues. Specifically you have asked the following questions:

> (1) In school board referenda where there is a desire to protect the results of the election, with whom is the protest filed? Would the appropriate county election commission hear any protest concerning the conduct of the election as provided in Title 7, with possible appeal to the State Board of Canvassers; or, would Section 59-71-60 of the 1976 South Carolina Code of Laws control, with any protest filed directly with the courts and the county election commission and the State Board of Canvassers being left out entirely?

The Code is silent as to any procedure for a protest of a school board election to a County or State Board of Canvassers. The statutes do, however, provide a specific procedure to contest a school bond election. Section 59-71-60 provides that

> ... the results of the [school bond] election ... shall not be open to question except by a suit or proceeding instituted within thirty days from the date of filing thereof. [Emphasis Added]

Any basis for protesting or questioning the school board election on any grounds, therefore, must presumably be handled in this litigation. [FN1]

> (2) I am enclosing a copy of a letter from the chairman of the York County Patriot Party posing questions relating to party organization and nomination of candidates that are not specifically addressed by Title 7 (7-9-50, 7-9-70, 7-9-10, 7-11-10, 7-13-45 and possibly other statutes).
>
> Basically, as I understand his letter, he is asking if more than one political party can share the cost of the notices of organizational meetings and filing information required by State law.

The purpose of a notice being given is to ensure that the public is aware of the activities of the party should they choose to participate by attending, becoming a delegate, becoming a candidate, or to otherwise participate.

The statutes clearly envision that each political party would give notice regarding the activities of their own party. As examples Section 7-13-45 requires that “[i]n every general election year, the county chairman shall ... place an advertisement to appear two weeks before the filing period begins in a newspaper ... that notifies the public. ..”; Section 7-9-50 concerning the re-organization of clubs states that “[a] notice must be published by the county committee ... before the meeting date in a newspaper having general circulation in the county.”

However, there is no specific statutory prohibition that would absolutely prevent several parties publishing a joint notice. Although there is no direct prohibition, the practicalities of two or more parties giving joint notices may be unworkable in that the political parties would have to be holding conventions, elections, etc., on the same or almost identical dates to meet the timeline requirements set out in some of the applicable statutes. Additionally, if notification of two or more parties is given in one notice that results in confusion to the public, it would defeat the purpose of giving legal notice of the parties activities. Should confusion of the electorate or candidates occur it would not only defeat the purpose of giving notice, it could open up additional grounds for protesting or contesting an election.

***2** If this is a serious problem, the parties should perhaps seek legislative clarification of what joint activities regarding notices, etc., would be permissible.

You further state that

> Additionally, he asks if there is any prohibition against the nomination of the same candidate for an office by more than one political party and how, if permissible, should the total votes received by that candidate be certified.

Two or more parties could conceivably list the same candidate. [FN2] However, this would take the active consent of both parties as to do so would violate the pledge each candidate takes to affiliate with one party and to abide by the results of the primary. S.C. Code Ann. §7-11-210 (Supp. 1996). The oath authorizes the political party to bring an ex parte action against a defeated candidate should the candidate try to offer again as a candidate in that election. As only the party can raise this issue, if the parties agree to allow a candidate to run in both of their elections, it would be possible for a candidate to offer as a candidate in two or more political parties; however, it would place the candidate in an ethical conflict as he would have signed a pledge that he may not be able to honor.

Votes received should be tallied by each party and reported to the appropriate authority to be tallied.

This letter is an informal opinion and represents only the opinions of the undersigned attorney. It has not, however been personally reviewed by the Attorney General nor officially published in the manner of formal opinions.

If you have any additional questions, please let me know.

Very truly yours,

Treva Ashworth
Deputy Attorney General

[FN1] This statutory procedure has been upheld and justified on the grounds of government needing a quick and definite decision on if the bonds have been properly issued. See, Morgan v. Feagin, 95 S.E.2d 621 (1956).

[FN2] Except, as Mr. Bell already points out, in Presidential Elections.

1998 WL 62941 (S.C.A.G.)
END OF DOCUMENT