ALAN WILSON
ATTORNEY GENERAL

June 27, 2011

Marci Andino, Executive Director
South Carolina Election Commission
P. O. Box 5987
Columbia, South Carolina 29250

Dear Ms. Andino:

You seek guidance "concerning the authority of the State Election Commission (SEC) to enter into a contract with the political parties for the purpose of conducting the 2012 Presidential Preference Primaries." You stated that "[s]ince Proviso 79.14 was not adopted, does the SEC have the authority to enter into a contract with the political parties?" By way of background, you note that

> Proviso 79.14 was introduced to provide clear authority to conduct the primaries, allow[ing] the SEC to enter into a contract with the political parties, charge the political parties for expenses incurred and to authorize use of the funds collected.

Law / Analysis

We begin our analysis with the principle that a state agency, such as SEC, must possess the requisite authority to perform the action taken. As we explained in an opinion, dated May 25, 2004, regarding the authority of the State Election Commission to procure the implementation of a Uniform Statewide Voting System for South Carolina,

> "[g]overnmental agencies or corporations, municipal corporations, counties and other political subdivisions can exercise only those powers conferred upon them by their enabling legislation or constitutional provisions, expressly, inherently, or impliedly." *Op. S.C. Atty. Gen.*, September 9, 2002; *Op. S.C. Atty. Gen.*, January 8, 1999; *Op. S.C. Atty. Gen.,* September 22, 1988. Likewise, as was observed in *Medical Society of S.C. v. MUSC*, 334 S.C. 270, 513 S.E.2d 352, 355 (1999),
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> > "[a]n agency created by statute has only the authority granted it by the legislature." [Citing *Nucor Steel v. S.C. Pub. Ser(v). Comm.,* 310 S.C. 539, 426 S.E.2d 319 (1992).] Specifically, we have applied this rule to

> the State Election Commission, noting that the Commission "as any administrative agency, derives its authority and jurisdiction from the statutes creating it; its powers include those expressly granted by statute and those powers necessarily and reasonably implied therefrom." *Op. S.C. Atty. Gen.*, December 20, 1990, citing 1 Am.Jur.2d, *Administrative Law*, § 72, 73, 91. See also, *Op. S.C. Atty. Gen.*, Op. No. 3411 (November 14, 1972) [State Election Commission possesses no discretion to order a recount when the difference between the number of votes received by the candidate declared to have been elected is more than one percent more than the number of votes received by the candidate receiving a lesser number votes]; *Op. S.C. Atty. Gen.*, December 15, 1969 [no express constitutional or statutory authority authorizes either the State Election Commission or a board of registration to delegate the name of an elector from the roster of qualified voters simply because the elector no longer wishes to be registered].

Thus, we must identify the statutory authorization which would empower the SEC either itself to conduct or to contract with political parties to conduct the 2012 Presidential Preference Primaries.

Section 7-13-50 deals with second and "other primaries." With respect to the role of the State Election Commission, § 7-13-50 provides in pertinent part that "[o]ther primaries, if necessary, must be ordered in a similar manner by the county election commission or the State Election Commission, as appropriate."

In addition, § 7-11-20 specifically addresses Presidential Preference Primaries, who may conduct them, and how they are to be conducted. Section 7-11-20 is a lengthy provision, but it is necessary to here quote the statute in its entirety. Section 7-11-20 reads as follows:

> **§ 7-11-20. Conduct of party conventions or party primary elections generally; presidential preference primaries.**
>
> (A) Except as provided in subsection (B), party conventions or party primary elections held by political parties certified as such by the State Election Commission pursuant to the provisions of this title to nominate candidates for any of the offices to be filled in a general or special election must be conducted in accordance with the provisions of this title and with party rules not in conflict with the provisions of this title or of the Constitution and laws of this State or of the United States.

(B)(1) Except as provided in item (2), a certified political party wishing to hold a presidential preference primary election may do so in accordance with the provisions of this title and party rules. However, notwithstanding any other provision of this title, the state committee of the party shall set the date and the hours that the polls will be open for the presidential primary election and the filing requirements. If a party holds a presidential preference primary election on a Saturday, an absentee ballot must be provided to a person who signs an affirmation stating that for religious reasons he does not wish to take part in the electoral process on a Saturday.

(2) For the 2008 election cycle, if the state committee of a certified political party which received at least five percent of the popular vote in South Carolina for the party's candidate for President of the United States decides to hold a presidential preference primary election, the State Election Commission must conduct the presidential preference primary in accordance with the provisions of this title and party rules provided that a registered elector may cast a ballot in only one presidential preference primary. However, notwithstanding any other provision of this title, (a) the State Election Commission and the authorities responsible for conducting the elections in each county shall provide for cost-effective measures in conducting the presidential preference primaries including, but not limited to, combining polling places, while ensuring that voters have adequate notice and access to the polling places; and (b) the state committee of the party shall set the date and the filing requirements, including a certification fee. Political parties must verify the qualifications of candidates prior to certifying to the State Election Commission the names of candidates to be placed on primary ballots. The written certification required by this section must contain a statement that each certified candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications in the United States Constitution, statutory law, and party rules to participate in the presidential preference primary for which he has filed. Political parties must not certify any candidate who does not or will not by the time of the general election meet the qualifications in the United States Constitution, statutory law, and party rules for the presidential preference primary for which the candidate desires to file, and such candidate's name must not be placed on a primary ballot. Political parties may charge a certification fee to persons seeking to be candidates in the presidential preference primary for the political party. A filing fee not to exceed twenty thousand dollars, as determined by the State Election Commission, for each candidate certified by a political party must be transmitted by the respective political party to the State Election Commission and must be used for conducting the presidential preference primaries.

> (3) The political party shall give written notice to the State Election Commission of the date set for the party's presidential preference primary no later than ninety days before the date of the primary.
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> (4) Nothing in this section prevents a political party from conducting a presidential preference primary for the 2008 election cycle pursuant to the provisions of Section 7-11-25.

We note at the outset that Subsection (B)(2) of § 7-11-20 uses the express words "For the 2008 election cycle ...." Moreover, Subsection (B)(4) of § 7-11-20 states that "[n]othing in this section prevents a political party from conducting a presidential preference primary for the *2008 election cycle* pursuant to the provisions of Section 7-11-25."[1] (emphasis added). Thus, at first blush, it would appear that § 7-11-20 is inapplicable to the 2012 Presidential Primaries by its own terms.

A number of principles of statutory construction are herein applicable. First and foremost, is the cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. *State v. Martin*, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1990). Any statute must be interpreted with common sense to avoid unreasonable consequences. *United States v. Rippetoe*, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. *McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964).

In addition, it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature. *Father v. S.C. Dept. of Social Services*, 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001), referencing *Joytime Distrib.& Amusement v. State*, 338 S.C. 634, 649, 528 S.E.2d 647, 655 (1999) and 73Am.Jur.2d *Statutes* § 98 at 322 (1974) ["[I]t is a generally accepted view of the United States that resort may be had to the title of an act as an aid of interpretation."].

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[1] Section 7-11-25 provides that "[e]xcept for the provisions of Section 7-11-20 related to presidential preference primaries, nothing in this chapter nor any other provision of law may be construed as either requiring or prohibiting a political party in this State from conducting advisory primaries according to the party's own rules and at the party's expense."

In *Father*, even though the statutory scheme appeared to limit the recovery by a party against a governmental entity for fighting an adverse claim brought against it by that entity, the Court of Appeals consulted the title or caption of the chapter to conclude otherwise. According to the Court, the "very fact that the legislature entitled this chapter the 'South Carolina Frivolous Proceedings Sanctions Act' indicates the chapter was not enacted solely to compensate an aggrieved party for expenses incurred to fight a baseless claim." 345 S.C. at 66-67. Thus, in the opinion of Judge Goolsby, writing for the Court,

> [i]n view of the designation of sections 15-36-10 through -50 as a "sanctions" act and the stringent requirements for recovery under these provisions, we hold an award of sanctions against the South Carolina Department of Social Services in a child abuse and neglect action is not necessarily barred by section 15-77-300. Although awards under the South Carolina Frivolous Proceeding Sanctions Act are limited to attorneys fees and costs, this limitation serves only as a measure of the sanctions allowable under the Act and does not undermine the fundamental objective of deterring egregious misuses of the court system by governmental agencies as well as by private parties .... .

Id. at 67.

Accordingly, the literal text is not necessarily controlling in the interpretation of a statute if such literal language is in conflict with the overarching intent of the General Assembly. As the Supreme Court recognized in *Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 815 (1942), "Courts will reject the ordinary meaning of the words used in a statute *however plain it may be*, when to accept such meaning would defeat the plain legislative intent." [emphasis added].

In *Greenville Baseball*, the Court cited with approval *Bruner v. Smith*, 188 S.C. 75, 198 S.E. 184 (1938). In *Bruner*, the Court refused to read the words "or major fraction of them" as used in the statute, literally. Petitioner had been appointed Comptroller of Oconee County upon the recommendation of the Senator and one of the two House members in the delegation. Respondent, the holdover Comptroller, refused to surrender the Office to Petitioner, contending that the literal language of the statute referred to a "major fraction" of the two House members. Since there could be no " major fraction" of two, Respondent thus argued that the literal words in the statute required unanimous approval of the delegation. Rejecting this interpretation, the Court read the statute as requiring a "major fraction" of the entire delegation, and thus the new Comptroller was validly appointed. Quoting *Stackhouse v. County Bd. Of Com'rs.*, 86 S.C. 419, 68 S.E. 561 (1910), the *Bruner* Court stated:

> [h]owever plain the ordinary meaning of the words used in a statute may be, the Courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature, or would defeat the plain legislative intent, and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

198 S.E. at 188.

Having set forth the applicable rules of statutory interpretation, we turn now to § 7-11-20(B)(2). As noted above, the literal text of the statute, enacted in 2007 as Act No. 81, twice references the phrase "2008 election cycle." Examining the literal language only, it is logical to assume that this provision is inapplicable to the 2012 Presidential Preference Primaries. However, in contrast to the text, the Title of the Act is not so limited. Indeed, from the language contained in the Title, it appears the Legislature intended § 7-11-20(B)(2) to be a continuing authority bestowed upon the State Election Commission. The Title reads as follows:

> AN ACT TO AMEND SECTIONS 7-11-20 AND 7-13-15, BOTH AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PARTY CONVENTIONS AND PARTY PRIMARY ELECTIONS CONDUCTED BY THE STATE ELECTION COMMISSION AND COUNTY ELECTION COMMISSIONS, *SO AS TO PROVIDE THAT THE STATE ELECTION COMMISSION CONDUCT PRESIDENTIAL PREFERENCE PRIMARIES*, THAT THE STATE COMMITTEE OF THE PARTY SET THE DATE, FILING REQUIREMENTS AND CERTIFICATION FEE FOR THE PRESIDENTIAL PREFERENCE PRIMARIES, TO PROVIDE A PROCEDURE FOR VERIFICATION OF THE QUALIFICATION OF CANDIDATES TO CLARIFY CERTRAIN EXISTING PROVISIONS CONCERNING THE PRIMARIES MUST BE CONDUCTED BY THE STATE ELECTION COMMISSION ANDN COUNTY ELECTION COMMISSION; TO DESIGNATE SECTION 14 OF ACT 253 OF 1992 AS SECTION 7-11-25, *RELATING TO POLITICAL PARTIES NOT PROHIBITED FROM CONDUCTING PRESIDENTIAL PREFERENCE OR ADVISORY PRIMARIES*, SO AS TO DELETE THE REFERENCES TO PRESIDENTIAL PREFERENCE PRIMARIES; AND BY ADDING SECTION 7-9-110 SO AS TO AUTHORIZE A POLITICAL PARTY OR STATE ELECTION COMMISSION TO CONDUCT A PRIMARY OR ELECTION, WITHOUT CHARGE, IN A FACILITY THAT RECEIVES STATE FUNDS FOR SUPPORT OR OPERATION.

(emphasis added). It can be seen from the emphasized portions of the Title that "the State Election Commission [may] conduct Presidential Preference Primaries," but that "political parties [themselves] are not prohibited from conducting Presidential Preference Primaries." Again, there is no limitation contained in the Title limiting the time frame of this authority to the single "election cycle" of 2008

The Title of Act 81 appears to be consistent with the Act's Section 2, now codified at § 7-13-15(A)(2). Section 7-13-15 provides the general authority of the State Election Commission to conduct primaries. Subsection (A)(2), however, exempts Presidential Preference Primaries from such general authority, stating that "[t]his section does not apply to presidential preference primary elections for the Office of President of the United States, *which are provided for in Section 7-11-20(B).*" Subsection (B)(2) repeats the phrase "which are provided for in Section 7-11-20(B)." (emphasis added). Undoubtedly, § 7-13-15 is a continuing, permanent authority bestowed upon the State Election Commission. In the exception, contained in § 7-13-15(A)(1) and (B)(2), for Presidential Preference Primaries, the General Assembly appears to recognize that the authority to conduct such Primaries contained in 7-11-20(B)(2), is a continuing authority ["provided for in Section 7-11-20(B)."]

Furthermore, it is important to note that the Legislature directed that all parts of Act No. 81 of 2007, including Subsection (B)(2) which contains the "2008 election cycle" language, were to be codified. Subsection (B)(2) of the Act was codified as § 7-11-20(B)(2), and remains so today, four years after the Act's passage and, of course, more than three years after the 2008 Presidential Preference Primaries.

Codification of a statute in South Carolina generally means that statute is a permanent law of the State. Section 2-13-170 provides that

> [t]he Code thus prepared by the [Code] Commissioner shall be declared by the General Assembly in an act passed according to the terms of the Constitution of 1895 for the enactment of laws, to be the only general *permanent* statutory law of the State, and no alterations or additions to any of the laws therein contained shall be made except by act passed under the formalities required in the Constitution.

In an opinion, dated May 19, 1987, we addressed the legal effect of codification of a statute. There, we referenced § 2-13-60 of the Code, which empowers the Code Commissioner to "[d]ivide the acts and joint resolutions into such as may be of general permanent kind, and such as may be local or of a temporary nature, with indices and cross indices … ."

The question before us in the 1987 Opinion was the effect of two acts which had been "codified in the respective Acts and Joint Resolutions by the Code Commissioner within the

general and permanent provisions rather than in the section reserved for local and temporary enactment." Specifically, the issue was whether two statutes relating to the withdrawal or diversion of waters "relative to the cities of Walterboro and Charleston would be local acts and thus have been repealed by Act No. 90 of 1985 ... ." In our opinion, we deferred to the conclusion of the Code Commissioner, who had exercised his authority pursuant to § 2-13-60 and had determined the statutes were permanent general provisions rather than local and/or temporary. We concluded as follows:

> [t]he General Assembly has delegated the determination of whether a law is general and permanent, or local, or temporary, to the Code Commissioner, who has made the determinations as described above, in keeping with his duties prescribed by Section 2-13-60 of the Code. As has been stated by the Supreme Court, "[t]he construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons." *Faile v. S.C. Employment Security Commission*, 267 S.C. 536, 540, 230 S.E.2d 219 (1976). Furthermore, it is the policy of this Office not to review administrative decisions made by the official authorized or required by statute to make such decision. Cf., *Griggs v. Hodge*, 229 S.C. 245, 92 S.E.2d 654 (1956); *Op. Atty. Gen.*, dated February 6, 1984. Thus, Act No. 84 of 1963 and Act No. 835 of 1956 should be characterized as general, permanent acts, since the Code Commissioner's interpretation as required under Section 2-13-60 of the Code is entitled to "respectful consideration" and is not to be overruled "without cogent reasons."
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> Because the two acts have been designated as general permanent acts by the Code Commissioner, it is the opinion of this Office that the General Assembly did not intend to repeal the two acts by the terms of Act N-. 90 of 1985.

The same reasoning, expressed in the above referenced opinion, also governs here. Examination of the Acts and Joint Resolutions of 2007 reveals that the Code Commissioner placed the entire Act No. 81 of 2007, including Subsection (B)(2), in the "General and Permanent Laws," rather than in the "Local or Temporary Laws" section. This determination by the Code Commissioner, in keeping with our 1987 Opinion, is entitled to respectful consideration and is not to be overruled without cogent reasons.

Moreover, as discussed above, the General Assembly has itself directed that Subsection (B)(2) be codified as § 7-11-20(B)(2). Pursuant to § 2-13-170, such action means that the Legislature considers Subsection (B)(2) of Act No. 81 of 2007 as part of the "permanent statutory law of the State ...." It would certainly have been illogical, if not absurd, to have codified a provision if were to expire almost immediately, once the 2008 election cycle had ended. See also, *Op. S.C. Atty. Gen.*, July 30, 1987 [legislation establishing the Water Pollution

Control Revolving Fund in the Appropriations Act is not temporary, but is permanent, by virtue of the direction of General Assembly and determination of Code Commissioner.].

Our Supreme Court has recognized the importance of codification into the "permanent statutory law of the State." For example, in *State v. Connelly*, 227 S.C. 507, 88 S.E.2d 591 (1955), the Court concluded that where there existed an omission in the codified version of a penalty provision concerning the punishment of possession of liquor in unstamped containers, the codified provision controlled. The result in that case was that the sentence imposed was pursuant to the unambiguous codified statute and thus was not excessive. And, in *S.C. Tax Commission v. York Electric Cooperative, Inc.*, 275 S.C. 326, 270 S.E.2d 626 (1980), the Court concluded that an alleged constitutional defect in the Uniform Disposition of Unclaimed Property Act – that such Act violated the "one subject" rule – was eliminated by codification of the statute. Relying upon *Colonial Life v. S.C. Tax Commission*, 233 S.C. 129, 103 S.E. 908 (1958), the Court found:

> [t]he Uniform Disposition of Unclaimed Property Act, approved in 1971, was incorporated into the 1976 Code of Laws as Sections 27-17-19 through 27-17-360. Since the Unclaimed Property Act, originally adopted as a part of the permanent provisions of Act 410 of 1971, was properly incorporated into the 1976 Code, and declared by the General Assembly to be part of the general statutory law of the State, the constitutional objection that it originally violated Article III, Section 17, must be overruled.

278 S.C. at 332, 270 S.E.2d at 629.

Moreover, in *Dacus v. Johnston*, 180 S.C. 329, 185 S.E. 491 (1936), the Court applied the codification rule to the situation involving the salaries of the Highway Commissioners. Governor Olin Johnston has suspended the Commissioners for voting to pay the salary of Chief Highway Commissioner Ben Sawyer. The salary of Commissioner Sawyer had been vetoed by Governor Johnston and, therefore, Johnston concluded that, in the absence of an appropriation to pay Sawyer, any vote to do so by the Highway Commission exceeded the amounts stated in any appropriation.

However, the Supreme Court noted that a provision of the Code provided the authority to pay Sawyer's salary. In the view of the Supreme Court,

> [a]s it is seen, section 5969 provides that when the state highway commission has made the annual estimate, such "amounts are hereby appropriated for said purposes respectively." *This is a permanent act embodied in the Code of 1932. It is a self operating provision. It does not need to be repeated annually. It is of force until it is repealed. It is a continuing appropriation.*

185 S.E. at 502. (emphasis added). Thus, notwithstanding that appropriations generally are for one year only, the legislative intent regarding the statute in question was that there be a continuing obligation through the permanent appropriation. See also, *State ex rel. McLeod v. Mills*, 256 S.C. 21, 180 S.E.2d 638 (1971) [permanent statute setting salaries of state's constitutional officers was controlling and thus no violation of constitutional requirement that salaries may not be increased or decreased during their term].

People ex rel. Cason v. Ring, 242 N.E.2d 267(Ill. 1968) is particularly instructive here. In *Ring,* the Illinois Supreme Court faced a situation where 1967 amendments to the election code omitted reference to the 1968 election regarding the authority to erase the names from the register of voters of those unqualified to vote. However, the amendments authorized such removal for the 1970 elections and every election thereafter. It was argued that the changes in the wording of the statute provided no authority for the removal of ineligible voters' names for the 1968 election, however. In the view of the Illinois Supreme Court, if the overarching legislative intent "can be collected from the statute, words may be modified, altered or supplied so as to obviate any repugnancy of inconsistency with such legislative intention." 242 N.E.2d at 272. Thus, the Court concluded as follows:

> [w]e believe that the omission from the 1967 amendments to the Election Code of a provision expressly continuing the employment of the erasure procedure for the 1968 election was purely an oversight by the legislature, and in view of the long standing applicability of that challenge procedure as well as it intended re-employment in 1970 and thereafter, we hold that sections 4-12 and 4-13 as presently constituted must be read as requiring the clerk of St. Clair County to conduct hearings on the erasure application duly filed by petitioners herein.

Id. at 273. Our own Supreme Court is in accord. See, *Ashley v. Ware Shoals Mfg. Co.,* 216 S.C. 273, 42 S.E.2d 390 (1947) [Court referenced a long line of cases where courts have altered or supplied words in accordance with the legislative intent and to avoid absurd results; in *Ashley*, the Court read the word "usual" to be "unusual."]; *Waring v. Cheraw, etc. Ry. Co.*, 16 S.C. 416 (1882) [the Court read the word "hereafter" as "hereinbefore"]; *Kitchen v. Southern Ry. Co.*,68 S.C. 554, 48 S.E. 4 (1904) [the Court read the word "of" to mean "or." We believe a similar conclusion is warranted here.

Conclusion

It is our opinion that § 7-11-20(B)(2), which authorizes the State Election Commission to conduct Presidential Preference Primaries, is a permanent statute and is now part of the general permanent statutory laws of South Carolina. The overriding legislative intent fully supports the conclusion that this provision is permanent, rather than temporary, notwithstanding the Legislature's use in the statute of the words "for the 2008 election cycle." Based upon legislative

intent, we believe a court would likely add the words "and hereafter" so as to read "for the 2008 election cycle and hereafter."

As discussed above, the Title of Act No. 81 of 2007 places no time restrictions upon § 7-11-20(B)(2). Indeed, the Title states that the General Assembly's intention is "that the State Election Commission conduct Presidential Preference Primaries," but that "political parties [are] not prohibited from conducting Presidential Preference Primaries ... ." Moreover, other parts of Act No. 81 of 2007, namely §§ 7-13-15(A)(2) and (B)(1), suggest also that the General Assembly intended to place no limited time duration upon the authority granted by § 7-11-20(B)(2).

Importantly, the Code Commissioner classified Act No. 81 *in its entirety* as a permanent, rather than a temporary statute. Further, the Legislature directed that Subsection (2)(B) of Act No. 81, be codified as § 7-11-20(B)(2), as part of the permanent statutory laws of the State, notwithstanding the reference therein to the "2008 election cycle." Such Code Section has remained in place, unchanged, three years after the 2008 election cycle ended. Such indicates the Legislature's acquiescence in § 7-11-20(B)(2) as permanent.

All of these are strong indicators that the Legislature intended § 7-11-20(B)(2) to be a permanent provision. It would make no sense to codify Subsection (B)(2) as part of the permanent laws if this provision were to expire of its own accord at the end of the 2008 election cycle. Of course, if the Legislature's intent is to the contrary with respect to our Conclusion herein the General Assembly may simply repeal or remove § 7-11-20(B)(2) prior to the 2012 nomination process. And, it is self-evident that only a court may interpret § 7-11-20(B)(2) with finality.

Accordingly, unless the statute is repealed, or a court concludes otherwise, we believe the answer to your question is "yes." It is our view that presently, at least, the State Election Commission possesses the authority either to conduct the Presidential Preference Primaries itself, or, in the alternative, to contract with the parties to do so. In view of the authority of the State Election Commission to conduct the 2012 Presidential Preference Primaries, we also believe such authority would permit, if necessary, the SEC to conduct the Primaries pursuant to a contract with the parties to assist in bearing the expense of such Primaries. The latter approach (pursuant to contract) may here be necessary in view of the fact that sufficient funds may not be available for the Election Commission to bear the expenses of conducting the Presidential Preference Primaries. Some form of contract in which the parties are charged for costs and

expenses in conducting the primaries may thus be the most suitable alternative.[2] The form of such a contractual arrangement is, of course, beyond the scope of an opinion of this Office.[3]

Sincerely,

Alan Wilson

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[2] Section 7-13-50's last sentence, empowering the State Election Commission to order "other primaries, if necessary, ... in a similar manner ... as appropriate" provides additional authority for our conclusion.

[3] We have recognized repeatedly that an agency may contract for the performance of ministerial or administrative functions. Op.S.C. Atty. Gen., December 14, 1999. Moreover, in view of our conclusion that the SEC possesses the authority to conduct the Presidential Performance Primaries, it would also possess the authority to perform such function pursuant to a contract with a political party. Here, if § 7-11-20 is applicable, both the State Election Commission, pursuant to § 7-11-20(B)(2) and the parties, pursuant to § 7-11-20(B)(4), are authorized to conduct Presidential Preference Primaries. Thus, a contract between them may be the best approach.