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Office of the Attorney General

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May 29, 1992

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
P. O. Box 142
Suite 510
Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Peeler:

In a letter to this Office you indicated that a magistrate who had been advised by a letter from the State Court Administration Office that he must retire due to his being over 72 years of age had at the time of his appointment by the Governor been advised by letter that his term would expire in 1995. You questioned which instruction would control.

An opinion of this Office dated April 2, 1992 determined that consistent with the decision of the United States Supreme Court in Gregory v. Ashcroft, 115 L.Ed.2d 410 (1991) a magistrate must retire by the end of the fiscal year of his 72nd birthday. An opinion of this Office dated September 30, 1991 determined that an individual age seventy, could be appointed to a four year term even though the term would extend beyond the age of mandatory retirement but at age seventy-two the individual would be required to retire. Therefore, the requirements of mandatory retirement would take precedence over the conclusion of an individual's term.

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If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:ss

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions