

1984 S.C. Op. Atty. Gen. 263 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-112, 1984 WL 159919

Office of the Attorney General

State of South Carolina

Opinion No. 84-112

September 7, 1984

*1 The Honorable John C. Hayes, III
Member
House of Representatives
Drawer 851, CSS
Rock Hill, South Carolina 29730

Dear Representative Hayes:

In a letter to this Office you questioned which state senators would be in a position to make recommendations to the Governor for a magisterial position in light of the fact that the State Senate will be composed of senators elected from single-member districts. In your letter you asked where a district in a county is represented by a non-resident senator, does a non-resident senator make the appointment? Also, as to the situation where a magistrate resides in a portion of a county represented by a non-resident senator and where the county also has a resident senator, does the non-resident senator who represents the district in which the magisterial district lies make the appointment or does the resident senator whose district does not encompass the magisterial district make the appointment?

As referenced in your letter, [Article V, Section 23 of the State Constitution](#) provides that the Governor ‘ . . . by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county . . . ’. In the case of [State ex rel. Riley v. Pechilis, 273 S.C. 628, 258 S.E.2d 433 \(1979\)](#), the State Supreme Court was asked to determine the constitutionality of requirements that individuals seeking nomination for the office of magistrate participate in advisory elections. In the opinion the Court stated:

‘ . . . while we have no doubt that the holding of advisory elections to ‘nominate’ magistrates is a well intentioned method of disclosing the choice of the people, there is simply no authority for this infringement upon the governor's discretion to appoint magistrates. . . . The clear effect of such primaries is to chill the constitutional selection process and abridge the discretionary power of the Governor to appoint magistrates.’ [273 S.C. 628 at 632–633](#).

Referencing such, it is clear that pursuant to [Article V, Section 23](#) the appointment of a particular individual as magistrate is discretionary with the Governor. As pointed out by the Court in [Pechilis](#), any infringement on the Governor's discretion to appoint is in conflict with such constitutional provision.

Referencing your question, it appears that this Office is unable to comment on which state senator would be authorized to make recommendations of individuals for appointment as magistrates. Arguably, such could be construed as ‘chilling’ the discretionary, power of the Governor to appoint magistrates.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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