

1979 WL 42797 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 6, 1979

*1 Honorable Joyce C. Hearn
Member
House of Representatives
1316 Berkeley Road
Columbia, South Carolina 29205

Dear Mrs. Hearn:

Your letter of January 23, 1979, requests the opinion of this Office as to whether candidates for magistrate may participate in preferential primaries for the office of magistrate.

In my opinion, candidates for the office of magistrate may not engage in political party activity for the reason that such activity is prohibited by the Code of Judicial Conduct which was promulgated by the Supreme Court of South Carolina, effective February 12, 1974. The bases upon which this conclusion is reached are set forth below.

In South Carolina magistrates are appointed by the Governor, by and with the advice and consent of the Senate. [Article V, Section 23, Constitution of South Carolina](#). Therefore, any nominating procedure, such as a political party primary, is advisory only, and not binding upon the Governor. Although, for many years, advisory primaries have been conducted to select nominees for the office of magistrate to be submitted to the Governor, and although the Supreme Court of this State has entertained suits arising from disputes in such primaries, the Court has always recognized in such instances that the office of magistrate is not elective, but is appointive. Such cases, of course, arose before the promulgation of the Code of Judicial Conduct on February 12, 1974. These cases do not, in my opinion, alter the status of magistrates as appointive, and not elective, officers.

The question is thus presented: Can a person seeking appointment as a magistrate participate in an advisory primary? The answer to this is governed by the provisions of Canon 7 of the Code of Judicial Conduct which is comprised of two sections.

Section A relates to political conduct in general and prescribes general standards of conduct which all judges and all candidates for judicial office must follow, whether the office be appointive or elective.

Section B, applying to elections between competing candidates, sets the standards for judges and challengers who run for elective judicial office. This section is inapplicable because it applies only to elective offices.

Section A of Canon 7 is applicable because it applies to all positions, whether appointive or elective. It prescribes that a judge or a candidate, whether holding or seeking an elective or appointive office, should not:

- a. act as a leader or hold any office in a political organization;
- b. make speeches for a political organization or candidate or publicly endorse a candidate for a public office; and
- c. solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except where an elective judicial office may be involved.

The remaining relevant portions of the Code relate to campaign conduct for elective judicial offices and permit certain political activity by judges and candidates in such instances; these permissive and restrictive provisions are not here set forth for the reason that they apply only to elective judicial offices, whereas the office of magistrate is appointive. Canon 7, Section A(2) (4), further provides:

*2 'A judge (or candidate) should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.'

In my opinion, the Code of Judicial Conduct prohibits an incumbent magistrate or candidate from participating in an advisory primary election for the appointive office of magistrate.

Very truly yours,

Daniel R. McLeod
Attorney General

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