

1976 WL 30718 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1976

***1 Re: Discretionary Grant #75-ED-04-0014, Williamsburg and Clarendon Counties' Juvenile Delinquency Project**

Mr. Lee M. Thomas
Director
Office of Criminal Justice Programs
Edgar A. Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Thomas:

You directed an inquiry to this office seeking assistance in answering the following questions: When a duly elected county clerk of court assumes the position of acting probate judge pursuant to S. C. Code Ann. Section 15-408 (1962), (1) is the juvenile jurisdiction of the probate court in any way altered or affected, and (2) is the judicial officer vested with the same authority in juvenile matters as is possessed by other probate judges sitting in counties not having a family court?

The provision of law, S. C. Code Ann. Section 15-408 (1962), which provides for the filling of a probate judgeship vacancy with the clerk of the circuit court, states that the clerk is to 'discharge the same duties, receive the same fees and be subject to the same liabilities' as provided for a probate judge. It is not to be presumed that the legislature would command the acting probate judge to discharge the same duties as other probate judges, subject the acting probate judge to the same liabilities as other probate judges, and provide for the acting probate judge's receipt of the same fees as other probate judges, unless the legislature intended that the acting probate judge possess the same jurisdiction and authority as all other probate judges possess under the terms of S. C. Code Ann. Section 15-444 (1962).

The rule of statutory construction is well established that an express grant of statutory power carries with it by necessary implication authority to use all reasonable means to make such grant effective. Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. This rule whereby a statute is extended by necessary implication has been most frequently applied in the construction of laws delegating powers to public officers and administrative agencies, 2A Sands, Statutes and Statutory Construction Sections 55.02-55.04 (1973).

Our view, therefore, is that the acting probate judge under S. C. Code Ann. Section 15-408 (1962) was invested by the legislature with the identical authority of other probate judges and that the jurisdiction of a probate court presided over by an acting probate judge is in no way altered or affected by the provisional nature of such an acting probate judge.

If this office may be of any further assistance in regard to this matter, please do not hesitate to contact us.

Sincerely,

Daniel R. McLeod
Attorney General

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