

1976 WL 30748 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 30, 1976

\*1 Thomas E. Rogers, Jr., Esquire  
191 South Warley Street  
Florence, SC 29501

Dear Mr. Rogers:

You have requested the opinion of this Office on the question of whether a person may run against only one of the two incumbent Florence district magistrates in the nominating election that is to be held in the Florence district of Florence County.

Elections such as the one to be held in Florence are regularly held in many counties for the purpose of nominating candidates for the office of magistrate. These nominations do not conflict with any provision of South Carolina law, but, as a matter of undisputed fact, the nomination of a candidate for magistrate by any political party is simply a suggestion to the Governor of a suitable person to be appointed by him as magistrate. Pursuant to Article V Section 23 of the Constitution of this State which declares that:

the Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law . . . ;

the Governor may accept or reject any nomination as he sees fit. See: [Salley v. Smith, et al.](#), 201 S.C. 338, 23 S.E.2d 6 (1942); [Weston v. Williams, et al.](#), 190 S.C. 112, 2 S.E.2d 381 (1939); [McKnight v. Smith, et al.](#), 182 S.C. 378, 189 S.E. 361 (1937); [Young v. Sapp, et al.](#), 167 S.C. 364, 166 S.E. 354 (1932).

Although these nominating elections are not required by law and are not binding on the Governor, they are nonetheless regulated by the General Assembly. See: Section 23-400.31 *et seq.*, South Carolina Code of Laws. There is no procedure in the laws regulating party primary elections that would enable a candidate to run for only one position and not the other in the Florence magisterial district unless those two positions were made separate and distinct by the act of the General Assembly that established the Florence district.

Act No. 25 of 1973 states in part:

There shall be the following magistrates in Florence County, located as follows: two in the Florence district, . . .

Act No. 25 also delineates the Florence district:

Florence district magistrates—the area included in Florence No. 1, Florence No. 2, Florence No. 3, Florence No. 4, Florence No. 5, Florence No. 6, Florence No. 7, Florence No. 8, Ebenezer, Coles Cross Roads, A.C.L. Railroad Shops, Mars Bluff, Tans Bay and Black Swamp voting precincts.

The two Florence district magistrates are not given jurisdiction over separate areas within the Florence district and each magistrate has jurisdiction over the entire district. No distinction is made between these two magistrates by the law responsible for their existence and no distinction can be made between them unless pursuant to an act of the General

Assembly. Thus, no distinction can be made between these two magisterial positions so as to enable a candidate, for example, to run for either Seat No. 1 or Seat No. 2 in the Florence district.

\*2 In the absence of any distinction of this sort between the two magisterial positions in the Florence district, the opinion of this Office is that each candidate in the nominating election must run against every other candidate running in the election, including each of the incumbent magistrates who decides to run.

Very truly yours,

Hutson S. Davis, Jr.  
Assistant Attorney General

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