

1976 WL 30489 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 8, 1976

*1 Honorable Robert E. Kneece
Chairman
Judiciary Committee
House of Representatives
1338 Pickens Street
Columbia, South Carolina 29201

Dear Bobby:

I enclose herewith opinion which is believed to be sufficient response to the questions raised by your letter of July 2, 1976. The opinion is carefully worded, in that the eligibility questions raised by your letter are not free from doubt. If further clarification is required, please contact me for purposes of permitting amendment of this opinion before releasing same.

We have not dealt with the last proviso of Section 1, Article XI, of the Act, which reads:

. . . [P]rovided, further, that upon approval of this Act by the Governor, the General Assembly shall begin the process of electing those family court judges authorized by this Act, such judges to take office on July 1, 1977.

Since Article II, Section 4, will not become effective until July 1, 1977, I would recommend an amendment in the 1977 Session, which would postpone the date on which family court judges would take office beyond July 1, 1977. An alternative solution to the problem would be to amend the Act so as to make Article II, Section 4, take effect earlier in the 1977 Session. We rely heavily on Article II, Section 4, as being the last expression of the legislative will, and hence, an implied modification of Section 30-6 of the 1962 Code. However, Article II, Section 4, does not take effect until July 1, 1977, which is the same day set forth in Section 1, Article XI, for elected judges to take office. If the 1977 Session of the General Assembly does not extend beyond July 1, 1977, a serious problem obviously exists because the saving provision of Article II, Section 4, will not be in effect until that date. Thus, eligibility would be governed by Section 30-6 of the 1962 Code, until Article II, Section 4, becomes effective. In substance, Section 30-6 would apply to any family court judges elected before July 1, 1977.

We would further recommend against election of any family court judges who are members of the present General Assembly or members of the 1977 General Assembly until after the effective date of Article II, Section 4, of the Act. If a member of the present General Assembly is elected as a family court judge before Article II, Section 4, takes effect, we would immediately be confronted with the question under Section 30-6, as to whether the office was created by the present General Assembly. This problem can be avoided if Article II, Section 4, takes effect prior to the election of any present legislators, or any 1977 legislators, to family court judges created by the Act.

I am available at your convenience for conference regarding this problem.

Yours very truly,

Victor S. Evans
Deputy Attorney General

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