

1976 WL 30490 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 8, 1976

*1 All past members of the General Assembly who do not serve as legislators in 1977 may qualify for election to the office of family court judge under Act 690, and any member who serves in 1977 may qualify for election on or after July 1, 1977, under Article II, Section 4 of the Act, by resigning his position as a legislator prior to the time of the election of the family court judges.

Honorable Robert E. Kneece
Chairman
Judiciary Committee
House of Representatives

QUESTION PRESENTED:

May members of the 1976 and 1977 Sessions of the General Assembly qualify for election to the office of family court judge under Act 690 of 1976?

AUTHORITY:

Act 690 of 1976.

Section 30-6, 1962 Code of Laws of South Carolina, as amended.

Vol. 2A, Sutherland Statutory Construction § 51.02.

[City of Spartanburg v. Blalock](#), 223 S.C. 252, 75 S.E.2d 360.

DISCUSSION:

On June 30, 1976, the Governor signed into law Act 690, the 'Judicial Reform' Act which provides for the creation of several family court judgeships on July 1, 1977, and for the election of these judges by the General Assembly.

Article II, Section 4, of the Act states the requisite qualifications of a prospective family court judge, and the last sentence of that section reads as follows:

Notwithstanding any other provision of law, any former member of the General Assembly may be elected to the office of family court judge.

Section 30-6 of the 1962 Code of Laws of South Carolina, as amended, also deals with the potential eligibility of a member of the Legislature to be elected to an office created by the General Assembly:

§ 3-6. Members not eligible for office created by Assembly.—No Senator or Representative shall, during the time for which he was elected, be elected by the General Assembly or appointed by any executive authority to any civil office

under the dominion of this State which shall have been created during the time for which such Senator or Representative was elected to serve in the General Assembly.

Although Article II, Section 4, of Act 690 does not expressly repeal or amend Section 30-6, the rules of statutory construction require that the two provisions be construed together since they both relate to the same subject. They must be construed in harmony with each other so far as is reasonably possible, despite the presence of any apparent conflict between the two provisions. However, if there is an irreconcilable conflict between the new provision and the prior statute, the new provision will control as it is the most recent expression of the Legislature. Vol. 2A, Sutherland Statutory Construction, § 51.02.

Section 30-6, without modification, would operate so as to render every member of the General Assembly serving in the 1977 Session ineligible for election to the office of family court judge. Furthermore, this statutory disqualification would extend beyond the 1977 Session to prevent a legislator serving in the 1977 Session from being elected to a family court judgeship under Act 690 during the entire length of the time for which he was elected to the General Assembly, notwithstanding resignation within such time.

*2 The new family court judgeships will be established on July 1, 1977, which is the effective date of Articles I, II and III of the Judicial Reform Act. Under Article II, Section 4 of the Act, 'any former member of the General Assembly' may be elected to the office of family court judge 'notwithstanding any other provision of law.' Article II, Section 4, which will become effective on July 1, 1977, does not define the phrase 'former member of the General Assembly.' A reasonable interpretation of the phrase would include all persons who have served as members of the General Assembly, but who are not members of the General Assembly at the time of their election as a family court judge under Act 690. This interpretation would readily include all past members of the General Assembly who do not serve in 1977 as well as all members serving in 1977 who resign their positions as Senators or Representative prior to the election of the family court judges.

The apparent conflict which exists between Section 30-6 of the 1962 Code and Article II, Section 4 of the new Judicial Reform Act must be resolved in favor of the most recent expression of the General Assembly. [City of Spartanburg v. Blalock](#), 223 S.C. 252, 75 S.E.2d 360. Thus, on July 1, 1977, the effective date of Article II, Section 4 of Act 690, Section 30-6 of the 1962 Code will be modified by necessary implication so as to qualify any 'former member of the General Assembly' for election to the office of family court judge, notwithstanding that the former member served as a legislator in the 1977 Session.

CONCLUSION:

Therefore, it is the opinion of this Office that all past members of the General Assembly who do not serve in 1977 may qualify for election to the office of family court judge under Act 690; and that any member who serves in 1977 may qualify for election on or after July 1, 1977, under Article II, Section 4 of the Act, by resigning his position as Senator or Representative prior to the time of the election of the family court judges.

Victor S. Evans
Deputy Attorney General

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