6320 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 12, 1997

The Honorable William H. O'Dell
Member, South Carolina Senate
Box 540
Ware Shoals, South Carolina 29692

Re: Informal Opinion

Dear Senator O'Dell:

You reference the fact that a particular magistrate was unsuccessful in passing the certification examination on two occasions. Due to illness, the magistrate was unable to take the examination the third time within the time period established by Court Administration. He then resigned as magistrate. You note that the successor magistrate was confirmed, but then had to resign due to a conflict surrounding his retirement funds.

You have enclosed a letter from the Director of Appointments, Office of Governor, referencing S.C. Code Ann. Section 22-1-10 (D), and concluding that such statute forecloses reappointment of this particular magistrate. You question whether the statute is applicable because the person in question is not the "current magistrate."

Law / Analysis

S.C. Code Ann. Sec. 22-1-10 (D) provides as follows:

> [u]pon written notification of the Supreme Court or its designee to the affected magistrate and the Governor of the failure of the magistrate to complete the training program or pass the certification examination required pursuant to subsection (C), the magistrate's office is declared vacant, the magistrate does not hold over, and the Governor shall appoint a successor in the manner provided by law; however, the

Request Letters

> Governor shall not reappoint the current magistrate who failed to complete the training program or pass the certification examination required pursuant to subsection (C) to a new term or to fill the vacancy in the existing term. (emphasis added).

Several principles of statutory construction are relevant to your inquiry. First and foremost, is the fundamental tenet of interpretation that the intention of the General Assembly must prevail whenever such intention can be ascertained. The primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Full effect must be given to each section of a statute, words used therein must be given their plain meaning and phrases must not be added or taken away in absence of ambiguity. Hartford Acc. and Indem. Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979). A court will reject the meaning of words of a statute which would lead to absurd consequences. Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928).

Section 22-1-10 (C)(1)(d) requires every magistrate to pass a "recertification examination within eight years after passing the initial certification examination, and at least once every eight years thereafter." Should a magistrate "not comply with these training or examination requirements his office is declared vacant on the date the time expires, or when he is notified as provided in subsection (D), whichever is earlier." As is referenced above, upon the magistrate's office being declared vacant, the magistrate may not hold over and the Governor "shall appoint a successor in the manner provided by law ... ."

Section 22-1-10 (D) was further amended by Act. No. 376 of 1996. The title of such enactment reads as follows:

> AN ACT TO AMEND SECTION 22-1-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976 RELATING TO THE APPOINTMENT OF MAGISTRATES SO AS TO PROVIDE THAT THE GOVERNOR SHALL NOT REAPPOINT A CURRENT MAGISTRATE WHO FAILED TO MEET THE TRAINING OR CERTIFICATION REQUIREMENT TO A NEW TERM OR TO FILL A VACANCY IN AN EXISTING TERM. (emphasis added).

This provision was clearly added to Section 22-1-10 (D) to close the loophole in the statute which had previously allowed magistrates who failed to qualify in accord with the

reference certification procedures, to be reappointed by the Governor even after the office of magistrate had been declared vacant by operation of law. Previous to the amendment in 1996, in other words, the Governor could legally reappoint the very same magistrate who failed to comply with the training or examination requirements; such could be done pursuant to his authority to "appoint a successor in the manner provided by law ... ." That loophole was closed by the 1996 amendment which added the language that "the Governor shall not reappoint the current magistrate who failed to complete the training program or pass the certification examination required pursuant to subsection (C) to a new term or to fill the vacancy in the existing term."

You now question, however, whether a magistrate who was not certified in the designated time period and whose office was declared vacant by operation of law as a result, may still be reappointed pursuant to Section 22-1-10 (D) simply because another magistrate was appointed to succeed him and that magistrate has now resigned. Your question relates to the statutory language that the Governor may not reappoint the "current magistrate ... ." Since the magistrate who failed the examination is not now the "current magistrate", you inquire whether such would somehow make that magistrate now eligible for reappointment even though he failed to qualify as required by Section 22-1-10. In my opinion, the magistrate could not be reappointed.

It is well-recognized that an officer's failure to qualify for an office pursuant to the provisions of a statute results in "an absolute loss of the right to enter on the office ..." and that such statutory provision is "self-executing ... ." 67 C.J.S., Officers, § 48. However, when an office is forfeited because of a particular statutory reason, such reason generally does not prevent reappointment of the officer "unless the particular ... [statute] makes him ineligible for the office." Cannon v. Town of Tempe, 281 P. 947 (Ariz. 1929). Moreover, where the language and intent of a statute is clear, a court has no right to look for or impose other meanings. Wynn v. Doe, 255 S.C. 509, 180 S.E.2d 95 (1971). Particular words may not be given a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent. Creech v. S.C. Pub. Service Auth., 200 S.C. 127, 20 S.E.2d 645 (1942). Concentration upon an isolated phrase or word is simply unwarranted. Laurens Co. Sch. Dists. 55 and 56 v. Cox, 308, S.C. 171, 417 S.E.2d 560 (1992). Thus, the question here is whether Section 22-1-10 (D) renders the magistrate in question ineligible for reappointment.

I do not read Section 22-1-10 (D) as ambiguous in any way. The obvious intent of the amendment in 1996 was to forbid the Governor from reappointing a magistrate who had failed to meet the "training or certification requirements ... ." Such a legislative intent is made clear by the fact that such reappointment may not be made either to "fill a vacancy in an existing term" or to "a new term." A public officer is elected or

appointed either for one or the other. See Op.Atty.Gen., May 29, 1992. The latter phrase, "new term", refers to the beginning date of another term and is not limited as to any particular "new term" but "a new term." (emphasis added). The word "a" is synonymous with "any". People v. One 1940 Sedan, 162 P.2d 318, 320 (1945). Thus, the Governor is prohibited from reappointing a magistrate to either fill out the vacancy or for "any" new term. It is obvious that such language forecloses any reappointment as magistrate.

Neither does the General Assembly's use of the word "current" to modify the word "magistrate" change this conclusion. The word "current" when used "as an adjective, has many and diverse meanings, and its definitions depends largely on the word which it modifies or the subject matter with which it is associated, and it must always be considered in the context in which it is used." 25 C.J.S., "Current", p.45. The term has "no fixed meaning in time ... ." Id. It is evident that the word "current" as used here is as an adjective to modify the phrase "magistrate who failed ... ." The reader must then ask "current" to when, and only one possible answer is reasonable -- the magistrate "current" at the time when he or she failed to complete training or pass the certification examination. In other words, the Governor is prohibited from reappointing that magistrate ("current" at the time when he failed to be certified) either to fill the vacancy in an existing term or to "a new term."

That "current" can have only this one meaning in this context -- i.e. the magistrate who was "current" at the time he failed the examination, (but not who is the "current" magistrate now) is easily proven. Section 22-1-10 provides that if any magistrate does not comply either with the training requirements or pass the examination, "his office is declared vacant on the date the time expires or when he is notified, as provided in subsection (D), whichever is earlier." If the Office is declared "vacant" at that point in time, the magistrate who failed the examination is clearly no longer the "current" magistrate regardless of what happens afterwards; thus, if "current" were deemed to mean the "present" magistrate "right now", (as is mentioned in your letter), the person would be immediately eligible for reappointment -- an absurd result both in terms of the statute's intent as well as in light of the rest of the same sentence which expressly prohibits reappointment to fill the vacancy in the existing term or to a new term. In other words, an undue emphasis on the word "current" would distort the statute's plain language that a magistrate who fails the examination cannot be reappointed to fill the vacancy in the present term or to a new term and defeats the General Assembly's intent to close the loophole previously allowing reappointment of the same magistrate who failed to meet the qualifications specified in Section 22-1-10. And the statute's prohibition is not changed simply because an intervening magistrate has served since the magistrate who failed to qualify vacated his office. What cannot be done directly, cannot be done indirectly. State

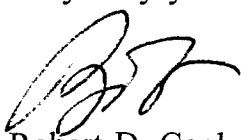
ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Op.Atty.Gen., July 31, 1990.

In conclusion, it is my opinion that Section 22-1-10 prohibits reappointment of a magistrate who failed to pass the certification examination as required pursuant to Subsection (C) of that Section either to fill a vacancy in the present term or to a new term. Thus, the person mentioned in your letter is statutorily ineligible for appointment as a magistrate notwithstanding any argument that he is not the "current" magistrate. I regret that I cannot be of greater assistance to you in this regard, but I am firmly of the Opinion that the statute does not permit reappointment of the individual in question.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph