

The State of South Carolina



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August 10, 1990

The Honorable J. Woodrow Lewis
Chief Justice, Retired
The Supreme Court of South Carolina
P. O. Box 53
Darlington, South Carolina 29532

Dear Justice Lewis:

You have asked whether in view of recent legislation dealing with the practice of law by retired judges you may engage in the general practice of law, including court appearances.

Pursuant to Section 2 of Act No. 466 of 1990, Section 9-8-120(4) of the Code was amended to read

A justice or judge drawing retirement compensation who engages in the practice of law may not serve as a justice or judge in any court in this State. 1/

Such provision was further amended this year by Act No. 610 to state:

A justice or judge drawing retirement compensation who engages in the practice of law may not serve as a justice or judge in any court in this State. Within thirty days of his retirement under this chapter, a retired judge or justice shall make an irrevocable election as to whether he wishes to engage in the practice of law or be eligible for appointment by the Chief Justice as a judge or justice in the courts of this State.

1/ Section 9-8-20(16) of the Code defines "judge" as "... a justice of the Supreme Court or a judge of the court of appeals, circuit or family court of the State of South Carolina."

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Act No. 610 became effective upon approval by the Governor on June 25, 1990. Formerly such provision stated

(n)o justice, or judge while drawing retirement compensation shall engage in the practice of law if such practice shall involve appearing in the courts of this State before a jury, administrative tribunal or judge or shall involve appearing before the Supreme Court of this State.

The title to Act No. 610 states that such is

... AN ACT ... TO AMEND SECTION 9-8-120, RELATING TO THE AUTHORIZATION FOR JUSTICES OR JUDGES WHO ARE RETIRED UNDER THE JUDICIAL RETIREMENT SYSTEM TO PERFORM JUDICIAL DUTIES IN CERTAIN COURTS ... AND TO REQUIRE A RETIRED JUDGE OR JUSTICE TO MAKE AN ELECTION UPON RETIREMENT AS TO WHETHER OR NOT HE WISHES TO PRACTICE LAW OR BE ELIGIBLE FOR APPOINTMENT TO SERVE AS A JUDGE OR JUSTICE IN THE COURTS OF THIS STATE....

Pursuant to subsection (3) of Section 9-8-120, as amended by Act No. 610, a retired justice or judge is authorized pursuant to the appointment of the Chief Justice of the Supreme Court to perform judicial duties in the Supreme Court, the Court of Appeals, the circuit courts or the family courts in conformity with Section 14-1-215, also included in Act No. 610.

Section 9-8-120(4) as amended by Act No. 610 makes specific reference to an "irrevocable election" by a retired judge or justice within thirty days of retirement as to whether that individual desires to engage in the practice of law or be eligible to be appointed as a judge or justice in the courts of this State. Obviously justices or judges who retired prior to the legislation becoming effective would not be able to meet such election mandate. However, the remaining provision of Section 9-8-120(4) remains and apparently would be applicable to any justice or judge drawing retirement compensation. Again, such provision states "(a) justice or judge drawing retirement compensation who engages in the practice of law may not serve as a justice or judge in any court in this State." I am unaware of any other statutory provision commenting on a retired justice's or judge's eligibility to practice law. It appears therefore that any justice or judge who retired prior to the effective date of the legislation must decide whether or not he or she wishes to practice law or be eligible for appointment to serve as a justice or judge. Moreover, pursuant to Section 14-1-215 of the Code, also

included in Act No. 610,

(i)n order to be eligible to be appointed by the Chief Justice to serve, any retired justice or judge of this State must have been screened in the manner provided in Section 2-9-10 and found by the committee to be qualified to serve in these situations within two years of the date of his appointment to serve.

Such screening requirement would also support the construction that a retired justice or judge must make a decision as to whether or not to practice law or be eligible for appointment as a justice or judge. It appears that the Chief Justice of the Supreme Court as the administrative head of the courts in this State could consider prescribing a period of time in which a justice or judge who retired prior to the effective date of Act No. 610 would make their election as to whether they wished to practice law or be eligible for appointment to serve as a justice or judge. Therefore, any procedural matters in such regard would be a matter for consideration by the Supreme Court. Such would be consistent with the jurisdiction of the Supreme Court regarding the practice of law in this State.

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). The legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987).

Based upon the above-referenced provisions it is the opinion of this Office that a retired justice or judge would be statutorily authorized to engage in the general practice of law, including court appearances. However, by doing so the judge is not entitled to serve as a justice or judge in any court in this State. Aside from statutory considerations, the Code of Judicial Conduct should also be considered. The Advisory Committee on Standards of Judicial

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Conduct has indicated that "because retired judges not eligible for recall to judicial service are not mentioned in Canon 7 of Rule 33, by implication they are not governed by the Judicial Code." Op. No. 1-990. However, an opinion should be sought from the Advisory Committee as to the propriety of the practice of law by a justice or judge pursuant to the Code of Judicial Conduct in light of the recent statutory amendments.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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