

The State of South Carolina



Office of the Attorney General

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June 10, 1991

The Honorable David H. Maring, Sr.
Judge, Family Court of the
Fifteenth Judicial Circuit
Post Office Box 806
Georgetown, South Carolina 29440

Dear Judge Maring:

You have advised that you have been elected to a circuit court judgeship, with term commencing July 1, 1991; you are presently serving as a Family Court Judge. Another individual, presently serving as mayor of a municipality, has been elected to the office of Family Court Judge, effective July 1, 1991; he plans to tender a letter of resignation to be effective July first to his city council. You have further advised that a swearing-in ceremony is being planned for June 29. You wish to know whether, in each case, taking the oath of your new judicial office will cause your present offices to be vacated though each of you will not assume the duties of your new offices until July first.

A review of House of Representatives and Senate journals reveals that you were elected to circuit court seat 2 for the Fifteenth Judicial Circuit on February 6, 1991, for a term commencing July 1, 1991. See Journal of the House of Representatives of the State of South Carolina, No. 18, at 15 (February 6, 1991). Your elevation to the circuit court will thus cause a vacancy in your present judgeship, for which office the Honorable H. E. Bonnoitt, Jr., was elected on May 8, 1991. House Journal, No. 70, at 67 (May 8, 1991). As a practical matter, your term for a circuit court judgeship cannot begin until July 1, 1991, by legislative mandate. Moreover, until you vacate your present judgeship, as of July 1, there is no vacancy on the Family Court bench to be filled by Mayor Bonnoitt.

Taking the oath of office does not, by itself, make one an officer, though it is one criterion to be considered in determining whether one is an office holder. See 63A Am.Jur.2d Public Officers and Employees §§ 4, 131. An oath may be viewed as a "prerequisite to full investiture with the office." 67 C.J.S. Officers

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§ 46. Indeed, statutory and constitutional provisions contemplate taking the oath of office prior to one's assumption of duties of the office. See S.C. Code Ann. § 14-5-110 and Art. VI, § 5, of the Constitution. However, exercise of duties involving the sovereign power of the State, another criterion examined to determine one's status as an office holder, will not begin until July first.

This Office advised, in an opinion dated November 6, 1987, concerning a similar situation:

Finally, you have advised that you will take your oath of office as a member of the ABC Commission on Monday, November 9, 1987. We must advise that merely taking the oath of office does not per se make one an officer. 63A Am.Jur.2d Public Officers and Employees, § 131. For the sake of convenience, it may be necessary for a public official to take his oath prior to the date of commencement of his term of office. As noted in the Senate Journal and the letter of Secretary of State Campbell, there appears to be no intention that your term as a member of the ABC Commission begin earlier than January 1, 1988.

Based on the foregoing, it is our opinion that you and Mayor Bonnoitt may take your respective oaths of office for your respective judgeships prior to the date of commencement of your respective terms of office without vacating your presently-held offices. The terms of the judgeships for which you were each elected do not commence until July first, and though you may have taken the oath of office prior to that date, you will not exercise the duties of those offices until July first.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook
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Executive Assistant for Opinions

cc: The Honorable H. E. Bonnoitt, Jr.