

The State of South Carolina



Office of the Attorney General

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April 2, 1992

R. L. McCurdy, Staff Attorney
South Carolina Court Administration
P. O. Box 50447
Columbia, South Carolina 29250

Dear Mr. McCurdy:

In a letter to this Office you referenced that several prior opinions of this Office construed State statutory provisions as requiring that a magistrate mandatorily retire at age 72. See: Ops. of the Atty. Gen. dated March 11, 1980, February 4, 1980, April 3, 1978 and June 8, 1972. However, in an opinion dated January 13, 1987 it was determined that due to an amendment to the Age Discrimination in Employment Act (ADEA), as of January 1, 1987 State judges who reached retirement age after that date were as a matter of federal law no longer required to retire at age 70 (or 72).

In Gregory v. Ashcroft, 115 L.Ed.2d 410 (1991), the United States Supreme Court determined that appointed State judges in Missouri were not covered by the ADEA and as a result, that State's mandatory retirement requirement for judges did not violate the ADEA. The requirement was set forth by Article V, Section 26 of the Missouri Constitution which provided that "(a)ll judges other than municipal judges shall retire at the age of seventy years."

In light of the decision in Gregory, the 1987 opinion should no longer be considered the opinion of this Office. Therefore, consistent with the earlier referenced opinions of this Office, a magistrate must retire by the end of the fiscal year of his 72nd birthday.


Mr. McCurdy

Page 2

April 2, 1992

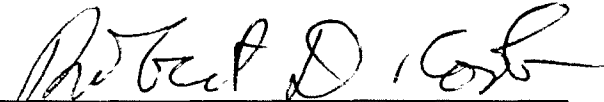
With kind regards, I am

Very truly yours,


Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:


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