

The State of South Carolina



Office of the Attorney General

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December 14, 1987

The Honorable Thomas E. Smith, Jr.
Chairman, Joint Legislative Judicial
Screening Committee
Post Office Box 308
Pamplico, South Carolina 29583

Dear Senator Smith:

By your letter of December 1, 1987, you have advised that the Joint Legislative Judicial Screening Committee will begin screening in the near future to fill two judgeships which will expire at the same time in the same judicial circuit. You have asked whether each judgeship is separate and distinct unto itself.

As an example, if judges "a" and "b" are offering for re-election and candidate "c" files for election, is the candidacy of "c" exclusively against judge "a" or judge "b," or for the circuit? Further, must candidate "c" file expressly against judge "a" or judge "b," or do all judicial candidates, including the incumbents, file for the circuit with the Legislature electing two candidates?

The answer to your question is not expressly stated within the Constitution of this State nor within the statutes relative to circuit court judges. However, based on custom and precedent, we would advise that each judgeship would be considered a separate office for purposes of election and further advise that one wishing to be a candidate for a judgeship would declare his candidacy for a particular judgeship rather than running "at large" from the circuit.

In those instances in which the General Assembly anticipated that more than one judgeship would be elected simultaneously, the General Assembly made it clear that each judgeship would be elected separately. See Sections 14-8-20(b) (candidates for Court of Appeals judgeships required to file for a specific seat); 14-5-610 (at-large circuit judgeships deemed to be sepa-

The Honorable Thomas E. Smith, Jr.
Page 2
December 14, 1987

rate offices); and 20-7-1370(D) of the Code of Laws of South Carolina (candidates for Family Court judgeships must file and run for a specific seat). We further note that in the Eleventh Judicial Circuit, when election of two circuit court judges was required in 1976 and again in 1982, each judgeship was treated as a separate office. See 1976 Senate Journal, pages 2737, 2738; 1982 Senate Journal, page 1515. Treating the candidacy and election of circuit court judges in a manner other than separately would establish an "at large" method of election in that judicial circuit which was not contemplated by statute and could create a situation in which a challenger unsuccessful in the first election would get a "second bite at the apple" in the second election. Such a situation appears to be unprecedented.

Based on the foregoing, this Office advises that in the instance of filling two vacancies in circuit court judgeships within the same judicial circuit at the same time, each judgeship should be treated as a separate office. If judges "a" and "b" offer for reelection by the General Assembly and candidate "c" wishes to offer for election also, he must declare his candidacy for one judgeship or the other rather than running "at large" in the circuit. Thus, candidate "c" would file to run against either judge "a" or judge "b," who presumably have filed for reelection to their respective judgeships. Then, as has been done in previous elections, each judgeship would be elected separately by the General Assembly.

We trust that the foregoing has satisfactorily responded to your inquiry. Please let us know if we may assist you further.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

REVIEWED AND APPROVED BY:

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