1984 S.C. Op. Atty. Gen. 129 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-52, 1984 WL 159859

Office of the Attorney General

State of South Carolina
Opinion No. 84-52
May 9, 1984

***1** The Honorable Carroll E. Reeves
Judge of Probate—Allendale County
Post Office Box 592
Allendale, South Carolina 29810

Dear Judge Reeves:
By your letter of February 24, 1984, you have inquired as to the legality of the appointment of a special referee to preside over the public sale of property located in Allendale County, where you hold the positions of Master and Probate Judge. With your letter you enclosed a 'Notice of Sale,' which notice showed that an attorney had been appointed 'Special Referee' to act in said capacity. You also cited Section 15–31–40 [1] of the Code of Laws of South Carolina (1983 Cum. Supp.) in support of your argument that appointment of a special referee is illegal.

For the following reasons, it is the opinion of this Office that a special referee may be appointed and that a sale conducted by a properly appointed special referee would be a legal sale.

Prior to the passage of the Judicial Reform Act, Act No. 164, 1979 Acts and Joint Resolutions, Section 15–31–40 read in pertinent part:
The reference shall be made to a master in all counties in which the office of master has been established. In all other counties the reference shall be made to such person or persons as shall be appointed as provided in Section 15–31–40 . . ..

Section 15–31–140, referred to in Section 15–31–40, provides for the appointment by the Circuit Court of a special referee upon the agreement of the Parties. By local law, Act No. 901, 1971 Acts and Joint Resolutions, Allendale County was excepted from the provisions of Section 15–31–40, and it was provided that reference be made to the Probate Judge in Allendale County.

As noted above, Act No. 164 of 1979 was enacted relative to magistrates, masters in equity, fees, and so forth. A review of the local laws shows that the office of special referee had been abolished in many counties; that probate judges were serving as masters in many counties; and that other county officials (clerk of court, juvenile and domestic relations judge, and so forth) were serving as special referees. The Act established the office of master in all counties, eliminated the office of special referee in those counties which still had special referees, and provided a uniform system of referral, fees, and powers and duties State-wide. And, as will be discussed more fully, infra, the Act also authorized circuit court judges to appoint special referees on a case-by-case basis.

Part II of Act No. 164 amended portions of Title 14, Chapter 11 of the Code, pertaining to the substantive aspects of the office of Master in Equity, as well as portions of Title 15, Chapters 31 and 39, relating to the procedural aspects of reference in general. Section 14–11–10 of the Code establishes a master-in-equity court in each county of the State. Sections 14–11–20 et seq. provide for the appointment, etc. of masters. Section 7 of the Act, amending Section 14–11–60, would show that the legislature contemplated instances in which the master might not be able to serve, by providing the following:
***2** In case of a vacancy in the office of master or in case of the disqualification or disability of the master from interest or any other reason the Circuit Court or a judge thereof may appoint a special referee in any case who shall as to such case be clothed with all the powers of a master.

Among the procedural statutes amended or added by the Act were Section 15–31–40, cited in footnote 1, that a reference shall be made to a master in all counties; and Section 15–31–150, which provides the following:
The provisions of §§ 140–2–5, 14–11–10 to 14–11–90; 14–11–310; [15]–31–10 to 15–31–80; 15–39–380 to 15–39–400, and 15–39–490 shall not be construed as preventing a circuit court from appointing a special referee in the manner as provided in § 15–31–140. Special referees shall be compensated by the parties involved. Special referees shall have the same authority as masters-in-equity and shall be accountable to the appointing court.

Section 15–31–140 provides the procedure for appointing or choosing a referee and was not disturbed by the Judicial Reform Act.

All provisions of an act must be read in pari materia and construed together so as to make all provisions operative, Lewis v. Gaddy, 254 S.C. 66, 173 S.E. 2d 376 (1970), and to give full effect to the legislative intent behind the Act. McGlohon v. Harlan, 254 S.C. 207, 174 S.E. 2d 753 (1970). Moreover, it must be presumed that the legislature did not intend to do a futile act. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E. 2d 778 (1964). In keeping with these basic rules of statutory construction, it would appear that the legislature intended to abolish the old office of special referee, placing the duties formerly assigned to that office with the master. A portion of the title of the Act, which may be used to ascertain legislative intent, University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E. 2d 433 (1966), would also lead to that conclusion; that portion is as follows:
An Act . . . To Amend Sections 15–31–10, 15–31–40, 15–31–50, 15–31–70 And 15–31–80, Relating To References To Masters And Referees, So As To Provide That All Such References Shall Be Made To Masters Only, To Delete References To The Term ‘Referees' And Further Provide For The Manner In Which Such References Shall Be Made; . . ..

Thus, in those counties which formerly had both a master and a special referee, after the Judicial Reform Act, all references in those counties would be made only to the master and no longer to the office of special referee.

Later provisions in the Act state that a circuit court judge continues to have authority to appoint a special referee; see Section 15–31–150, supra, which was Section 21 of the Act, and another pertinent portion of the title of the Act:
. . . To Provide That Circuit Court Judges Shall Continue To Have The Authority To Appoint Special Referees; . . ..

Reading together and giving effect to all portions of the Act, and presuming that the legislature did not intend to act in a futile manner, it must be concluded that while the office of master was created to hear referred matters, there is authority under Sections 14–11–60 and 15–31–150 for appointment of special referees on a case-by-case basis. This conclusion is bolstered by the fact that Section 21 of the Act (Section 15–31–150 of the Code) is last in the order of arrangement of the relevant sections of the Act and, being the latest expression of the legislative will, would prevail. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E. 2d 22 (1943). Thus, it would be proper in some instances to appoint a special referee, notwithstanding Section 15–31–40 of the Code. [2]

***3** The powers of a special referee, duly and lawfully appointed, would be those specified for the master in Sections 14–11–80 and 14–11–90, pursuant to Section 15–11–150. In particular, Section 14–11–80 would authorize a special referee to conduct public sales of property as the circumstances may require. Thus, sale of property by a special referee would be legal, assuming statutory requirements for appointment of the referee and any other orders of the appointing court have been met.

We trust that the above discussion satisfactorily resolves your question. Please advise this Office if we may clarify anything contained herein.
Sincerely,

B. J. Willoughby
Assistant Attorney General

Footnotes

1 Section 15–31–40 presently states, 'The reference shall be made to a master in all counties.'

2 By this opinion, this Office makes no judgment as to the propriety of the appointment of the special referee in the case mentioned within your letter. Furthermore, we cannot attempt to enumerate the situations in which appointment of a special referee would be suitable, necessary, or proper.

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