1982 WL 189112 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 29, 1982

***1** The Honorable Jackson V. Gregory
Post Office Box 1217
Walterboro, South Carolina 29488

Dear Representative Gregory:
You have asked the assistance of this office in answering certain questions relating to whether the Probate Judge of Colleton County may serve ex officio as Master-In-Equity. As information, you note that the term of the present Probate Judge is about to expire; you wish to know the following, which I take the liberty of paraphrasing:
1. Can the Probate Judge of Colleton County continue to serve as Master-In-Equity?

2. If not, when does the present Probate Judge cease to be Master-In-Equity?

3. If necessary to appoint another person as Master-In-Equity, what provision must be made by the County Council of Colleton County for the Master's salary and expenses.

To more fully answer these questions, I offer the following background information. In 1973, the General Assembly ratified new Article V of the South Carolina Constitution, which mandates that the "judicial power shall be vested in a unified judicial system ..." which would include "such other courts of uniform jurisdiction as may be provided by general law." Section 22 of Article V, however, insured the continuation of then existing courts, at least temporarily:
Notwithstanding the provisions of this Article, any existing court may be continued as authorized by law until this Article is implemented pursuant to such schedule as may hereafter be adopted. (emphasis added).

Following the ratification of Article V, the General Assembly nevertheless amended existing laws concerning performance of duties of the master-in-equity by the Probate Judge of Colleton County. See, Act. No. 136 of 1973 and Act No. 973 of 1974. Act No. 136 provided that if the Colleton Probate Judge were an attorney he could also serve as master-in-equity ex officio. No. 973 "altered the power of the Judge of Probate for Colleton County; it created the office of standing master." State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1975).

In 1975, the Supreme Court of South Carolina, in State ex rel. McLeod v. Court of Probate of Colleton County, supra, declared these two acts unconstitutional, as violative of Article V. These statutes, said the court, would unconstitutionally "extend the present non-unified court system" of probate courts. Id., 266 S.C. at 291, 292. Based upon the Colleton County case, this office then concluded that those statutes which had served as predecessors to Acts 136 and 973 were once again "in effect." See, 1976 Op.Atty.Gen., No. 4297, at 116, 117. [1] Section 15-501 of the Code of Laws of South Carolina (1962), which had preceded Act No. 973 of 1974, in essence, imposed the duties of the office of master upon the probate judge in a number of counties, including Colleton. Section 15-504, which had been repealed with the passage of Act No. 973 provided that "all equity causes arising in Colleton County" would come within the jurisdiction of the probate judge as referee.

***2** Then in 1976, in order to implement Article V's mandate for a unified judicial system, the General Assembly enacted Act No. 690, § 5 of which provided:

County courts and other similar courts with jurisdiction inferior to the circuit court and the offices of master-in-equity, standing master and special referee shall be abolished on July 1, 1979, and the jurisdiction of such courts devolved upon the unified court system; provided, however, that such county courts, other courts of similar jurisdiction, and the offices of master-in-equity, standing master and special referee shall be continued pursuant to Section 22 of Article V of the Constitution until July 1, 1979....

In keeping with the deadline imposed by Act No. 690, the General Assembly in 1979 passed Act No. 164, Part II, § 2, which is unofficially codified as § 14-11-10 et seq. of the Code of Laws of South Carolina (1976 as amended). This Act, to which you allude in your letter, made the master-in-equity court a part of the unified judicial system. Moreover, it expressly amended Act No. 690 of 1976 to the extent that that Act had completely abolished all masters-in-equity courts on July 1, 1979. § 14-11-10 provides:
The master-in-equity for each county holding office on the effective date of this act shall continue to serve as master-in-equity until the expiration of his term of office at which time his successor shall be selected as provided by law.... (emphasis added).

It is evident that, pursuant to this provision, even though Act No. 164 became effective on July 1, 1979, the Probate Judge of Colleton County continues to serve as Master-In-Equity, in accordance with the previously discussed local acts relating thereto, until the expiration of his or her term of office as Probate Judge. [2] At such time, those local laws which had governed the Master-In-Equity for Colleton County would cease to have any force or effect whatever; and such local enactments would be replaced by § 14-11-10 et seq., which now represents, as part of the unified judicial system, the sole method for selection of masters-in-equity. This office previously has so concluded. See, 1980 Op.Atty.Gen., No. 80-85, at 134-135. Therefore, in response to your second question, the Probate Judge of Colleton ceases to be Master-In-Equity at the expiration of his present term as probate judge. Accord., Op.Atty.Gen. (unpublished opinion, August 16, 1979).

Moreover, after the expiration of the present Probate Judge's term, no longer may the Probate Judge of Colleton County continue to function or serve as Master-In-Equity. Article VI, § 3 of the South Carolina Constitution provides that "No person shall hold two offices of honor or profit at the same time ...". Upon examination of § 14-11-10 et seq., there can be little doubt that the position of Master-In-Equity is an "office" for the purpose of Article VI, § 3, see, Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907), and has traditionally been so perceived. See, e.g., § 15-1802 et seq. of Code of Laws of South Carolina (1962); Cf., Verner v. Seibels, 60 S.C. 572, 39 S.E. 274 (1895); 30A C.J.S., Equity, § 514 et seq., at 552 (1965). Moreover, it goes without saying or recitation of authority that the position of Probate Judge is likewise an "office". Therefore, while there appears to be nothing contained in § 14-11-10 et seq. itself, which necessarily precludes the Governor from appointing the Probate Judge of Colleton as Master, such appointment would likely contravene Article VI, § 3 as dual officeholding. This is in accord with several previous opinions of this office. See, e.g. Op.Atty.Gen. (unpublished opinion, August 14, 1980). Thus, in response to your first question, we would advise that the Probate Judge of Colleton could not continue to serve as Master-In-Equity after the expiration of the term of the present Probate Judge. [3]

***3** With respect to your third question, as to "what provisions must be made by the county council for salary and expenses", again § 14-11-10 et seq. governs. § 14-11-30 expressly provides:
A master-in-equity shall be compensated in such amounts as may be provided and appropriated by the governing body of the county in which such master-in-equity shall serve: provided, a salary scale based upon caseload by the Court Administrator's office may be used as a guideline by the governing body of a county in compensating the master-in-equity, but in no case shall the governing body of a county having a full-time master compensate such master in an amount less than he is receiving as of June 15, 1979; provided, further that nothing in this section shall in any way give the County Administrator's office any additional control over the master-in-equity.

This office concluded in an earlier opinion that Act No. 164 of 1979 (§ 14-11-10 et seq.) "contemplates that the position of master-in-equity exists in each county or that it be provided for by two or more counties jointly." 1980 Op.Atty.Gen., No.

80-85, supra; see especially, §§ 14-11-10 and 14-11-40. Therefore, the position of master must be funded by each county (or a combination of two or more counties jointly) and in conformity with the provisions of Act No. 164. Beyond the mandates of the Act, however, the County may, of course, provide for the master's salary and expenses in the manner it chooses, as authorized by law.

I hope this represents an adequate response to your inquiries, and if you have any further questions, please do not hesitate to let me know.

With best wishes, I remain
Very truly yours,

Robert D. Cook
Assistant Attorney General

Footnotes

1 I do not attempt to address here, nor did the 1976 opinion of this office seek to answer, whether the General Assembly intended this result. The Court, in State ex rel. McLeod v. Colleton County, supra, relied primarily upon § 22 of Article V in generally concluding that the system of courts, as it had existed on April 4, 1973, the date of ratification of Article V, would be reinstated until action was taken by the General Assembly toward the formation of a unified court system. The Court did not address the issue of legislative intent except as such intent was reflected in Act No. 503 of 1973, which simply tracked § 22 of Article V.

2 We do not here address the constitutionality with respect to Article V of any further extension of these local laws as might be reflected in in the passage of Act No. 164.

3 No conclusion is here reached with respect to whether those local acts relating to the assumption of duties of master-in-equity by the Probate Judge of Colleton County were constitutionally valid pursuant to other provisions of the Constitution. Even if there were a legal problem with the Probate Judge continuing as Master until the expiration of his term, he would serve de facto until a new Master is selected. See, State ex rel. McLeod v. Colleton Co., supra.

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