1980 S.C. Op. Atty. Gen. 53 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-26, 1980 WL 81910

Office of the Attorney General

State of South Carolina
Opinion No. 80-26
March 7, 1980

***1** Honorable John G. Felder
Member
House of Representatives
Solomon Blatt Building
Columbia, South Carolina 29201

Dear Mr. Felder:
You have asked the opinion of this Office as to the time when candidates for the office of Family Court Judge must meet the eligibility requirements for that office, as set out in Section 14–21–425(A), Code of Laws, 1976, as amended.

That section provides:
'No person shall be eligible to the office of family court judge who is not at the time of his assuming the duties of such office a citizen of the United States and of this State, and has not attained the age of twenty-six years, has not been a licensed attorney at law for at least five years, and has not been a resident of this State for five years next preceding his election, and is not a resident of the circuit wherein the family court of which he is a judge is located. Notwithstanding any other provision of law, any former member of the General Assembly may be elected to the office of family court judge.'

To be eligible to the office of Family Court judge, the statute lays down five (5) conditions which must be met by a candidate:
(1) Citizen of the United States and of this State.

(2) Attainment of the age of twenty-six years.

(3) Licensure as an attorney for at least five years.

(4) Residence within this state for at least five years.

(5) Residence within the circuit wherein the Family Court to which he seeks election is located.

The statute fixes two conflicting dates on which a candidate must possess the foregoing qualifications. Initially, it requires that they be held at the time the duties of the office are assumed and, subsequently, it requires that they be held at the time one is elected to the office. Obviously, one qualifying date must control over the other unless a construction of the statute is reached which establishes the date of assumption of office at the time when some qualifications must be met and the date of election as the date when others must be possessed. There is nothing in the legislative history of the statute which warrants such a construction nor does its grammatical arrangement indicate other than two differing dates by which a candidate must be possessed of the necessary qualifications.

The courts of other jurisdictions reach varying results, depending upon their construction of constitutional or statutory provisions that may be involved, but it is clear that the language used in a statute or constitutional provision is of first importance in determining when qualifications that are required to exist. If it is specified that they must eyist at the time of election, a candidate

who does not possess them at that time is not eligible, although the disqualifications cease to exist before the beginning of the term. See, 63 Am.Jur.2d Public Officers, Sections 40, 41, and 71 A.L.R.3d 498, 536, et seq. In an effort to determine the intent of the General Assembly in the enactment of the law, it is clear that the conflict between the two dates for possession of the qualifications must be resolved.

***2** It is my opinion that the last of the two opposing dates stated in the law (and in the same sentence) will control. Thus, a candidate must possess the necessary qualifications for office at the time of the election. The rule is stated in Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22:

'In the consideration of conflicting provisions in a statute, the great object to be kept in view is to ascertain the legislative intent, and a construction which best secures the rights of all the parties affected has been held to be the proper construction. In accordance with the principles that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails. This is an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict and all other means of interpretation have been exhausted.'

Application of this rule would seem to be in accord with the intent of the General Assembly in enacting the law which created a new system of Family Courts. A date for the commencement of terms of the new court was fixed and the election of judges was held prior thereto. It seems reasonable to believe that on the date of that election, the members of the General Assembly assumed that all of the candidates voted upon possessed at that time the necessary qualifications for the office of Family Court Judge, as evidenced by their clearances by the legislative Qualifications Screening Committee. I do not think that the General Assembly contemplated that a candidate did not possess all of the qualifications laid down in the statute at the time he was voted upon but that he would, or might, be possessed of such qualifications by the date upon which he was to take office. While the attainment of nearly all of the qualifications can be related to a fixed date, at least one of them (citizenship of the United States) cannot with certainty be established at a fixed time in the future. See, 8 USC at 1447, and Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952).

It is the opinion of this Office that the qualifications of a Family Court Judge must be completed by the date of his election.

Very truly yours,

Daniel R. McLeod
Attorney General

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