

1980 WL 120725 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1980

*1 Ms. Zilla Hinton
Commissioner
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Commissioner Hinton:

I have received your correspondence dated May 28, 1980, in which you have requested an Opinion from this Office. Your request specifically pertains to the issue of whether or not an individual who is not an attorney may serve in the office of Solicitor of the judicial circuits of the State of South Carolina.

Neither the Constitution nor the Code of Laws of the State of South Carolina specifically enumerates that membership to the South Carolina Bar is a prerequisite for an individual to hold the office of Solicitor of any of the judicial circuits of the the State. [Article V, Section 20 of the Constitution of South Carolina](#) provides, in pertinent part, that:

There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff and a coroner, and in each judicial circuit a solicitor shall be elected by the electors thereof. All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation.

[Section 1-7-310 of the Code of Laws of South Carolina \(1976\)](#) provides that:

There shall be one solicitor for each judicial circuit, to be elected by the qualified electors of the circuit, who shall hold his office for the term of four years.

[Article VI, Section I of the Constitution of South Carolina](#) provides in pertinent part, that:

No person shall be popularly elected to any office in this State or its political subdivisions unless he possesses the qualifications of an elector. Each qualified elector shall be eligible to any office to be voted for, unless disqualified by age as prescribed in this Constitution.

It would thus appear from the aforementioned constitutional and statutory provisions that a Solicitor is not required to be an attorney. However, the inquiry does not end here. Of crucial importance to the resolution of the issue at hand is the question of whether or not a nonlawyer may fulfill the duties prescribed to the office of the Solicitor.

[Article V, Section 20 of the State Constitution](#) provides that ‘The General Assembly shall provide by law for their [solicitors] duties and compensation.’

[§ 1-7-310, et. seq., of the Code of Laws of South Carolina](#) prescribes the duties and responsibilities of the respective Solicitors of the judicial circuits of South Carolina. Under [§ 1-7-320 of the Code of Laws](#), the Solicitor shall give advice and counsel in matters of public concern, and assist the Attorney General, or each other, in all suits of prosecution in behalf of the State.

Under [§ 1-7-330 of the Code](#), Solicitors are empowered to attend the courts of general sessions for their respective circuits. Solicitors are also required to attend all inquests and preliminary hearings in capital cases when requested to do so by the coroner or the sheriff. [§ 1-7-340, Code of Laws of South Carolina \(1976\)](#).

*2 From the aforementioned statutory provisions, it is thus apparent that a Solicitor has many specifically enumerated duties and responsibilities, the preponderance of which require legal experience and knowledge. While a nonlawyer may be able to act in the role of an administrator if he or she were to be elected Solicitor, such individual would be hard pressed to fulfill the legal duties and responsibilities of the office.

[Article V, Section 4 of the Constitution of South Carolina](#) provides that the Supreme Court shall have jurisdiction over the admission to the practice of law of all individuals desiring to practice law within the State.

Pursuant to such constitutional authority, the Supreme Court promulgated Rules 5 and 5A of the South Carolina Court Rules for the Examination and Admission of Persons to Practice Law in South Carolina. The rules provide that no person shall be admitted to the practice of law in the State unless he or she fulfills the requirements of the two rules, which culminates in such person being licensed as an attorney.

Under the Supreme Court Rules concerning the South Carolina Bar, Rule IV states that ‘no person shall engage in the practice of law in the State of South Carolina who is not licensed by this Court and a member in good standing of the South Carolina Bar except as otherwise provided in the rules of this Court.’

Under the aforementioned constitutional and statutory provisions, it is evident that an individual cannot engage in the practice of law without having first been admitted to the Bar of South Carolina as an attorney.

It is therefore my Opinion that although the Constitution and Code of Laws of the State of South Carolina do not explicitly state that a Solicitor must be an attorney, such a qualification is implicit within the nature of the duties and responsibilities of the office. [Article V, Section 20 of the Constitution](#) empowers the General Assembly to prescribe the duties and responsibilities of the office of Solicitor. Pursuant to such authority, the General Assembly has within [§ 1-7-310, et. seq.](#), of the [Code of Laws](#) enumerated the duties of the Solicitor, the preponderance of such duties requiring legal experience and knowledge. While a nonlawyer Solicitor may conceptually be able to fulfill administrative roles of the office, it is highly improbable that such an administrative role could be fulfilled without a nonlawyer Solicitor rendering legal advice and opinions, written or oral. Such would constitute practicing law without a license, in violation of Supreme Court Rules 5 and 5A, as well as Rule IV of the Supreme Court Rules for the South Carolina Bar.

Additionally, the General Assembly specifically enumerated the duties of the Solicitor, which are to be performed by the Solicitor. Although the Solicitor may delegate specific tasks to any number of his assistants, he is not authorized by statute to completely divest himself of all of his legal duties, and serve in effect as an administrator. Such clearly was not the intent of the General Assembly.

Sincerely,

*3 Daniel R. McLeod
Attorney General

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