

1978 WL 34786 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 21, 1978

*1 The Honorable D. N. Holt, Jr.
Member
House of Representatives
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina 29402

Dear Representative Holt:

You have requested an opinion concerning a Charleston County personnel policy which has been construed to require the Acting Register of Mesne Conveyances to resign from her position if she becomes a candidate for elective office in a partisan election. It is the opinion of this office that the regulation is effective as to the Acting Register of Mesne Conveyances and that it does not abridge any constitutional guarantees as applied to the Acting Register of Mesne Conveyances.

County governing bodies are given the authority ‘ . . . to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people. . . .’ [§ 4-9-30\(7\), S.C. CODE](#), 1976. The Acting Register of Mesne Conveyances for Charleston County is not an official elected directly by the people but rather holds that office by virtue of holding the appointed position of Deputy Register of Mesne Conveyances. Act No. 453, S.C. ACTS, 1973. Since it does not concern an elected official, the Charleston County Council has the authority to enact personnel policies with respect to the Deputy Register of Mesne Conveyances, even with respect to her position as Acting Register of Mesne Conveyances.

This regulation as applied does not appear to violate any constitutional guarantees. The regulation is similar to the U.S. Hatch Act, [5 U.S.C. §§ 1501-1508](#), which has been upheld in the face of constitutional challenges based specifically on the First and Fifth Amendments to the U.S. Constitution. The U.S. Supreme Court upheld that act on the ground that it was a reasonable exercise of governmental power, finding that ‘actively partisan governmental personnel threaten good administration.’ [United Public Workers of America v. Mitchell](#), 330 U.S. 75 (1946). Therefore, that statute was necessary to promote integrity and efficiency in the discharge of official duties. *Id.*; see [Ex parte Curtis](#), 106 U.S. 371, 373 (1882). Similarly, the Charleston County personnel Policy appears to be designed to promote the same ends in the administration of county government, and would likely be upheld in the face of any constitutional challenge.

In conclusion, therefore, it appears that the regulation is a constitutional exercise of governmental power and would require the Acting Register of Mesne Conveyances in Charleston County to resign from her position as Deputy Register of Mesne Conveyances and as Acting Register of Mesne Conveyances if she chooses to be a candidate for elective office in a partisan election.

Sincerely yours,

David C. Eckstrom
Staff Attorney

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