

1978 WL 34892 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 2, 1978

*1 Honorable Harris P. Smith
Senator
District No. 1
407 ½ E. First Avenue
Easley, SC 29640

Dear Senator Smith:

I am in receipt of your recent letter concerning an advisory referendum for magistrate. As you are aware and as you stated in your letter, magistrates are appointed by the Governor and have only been voted on in the primaries through custom. As this office is not an elective office, a candidate for magistrate could not petition to be placed on the general election ballot.

There is one possible alternative that the county may utilize for selecting a candidate for magistrate. Under the provisions of Home Rule, a county can conduct an advisory referendum. South Carolina Code of Laws, 1976, Section 4-9-30(16). If the county should want to put the question to a vote in the general election, this is a possible route that could be utilized. However, it could create some problems in that the other candidates would have campaigned and run in the primary election and could question the propriety of this form of election. Additionally, there is some question if an advisory referendum could be interpreted as providing for this form of election. In general, a referendum would be held for the people to vote on a legislative measure and not to vote for a person for office.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

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