

1978 WL 34894 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1978

*1 Honorable Charles G. Garrett

Honorable Jefferson Verne Smith
South Carolina Senate
The State House
Columbia, South Carolina 29201

Dear Senators:

You have indicated that the County of Greenville desires to hold an advisory election in association with the June primaries for the purpose of nominating a candidate to fill the vacant magisterial office for the City of Greenville. In association with this you have asked whether the candidates for such office can be restricted to persons residing within the City of Greenville and additionally, whether those qualified to vote for the office may be restricted to those electors residing within the City of Greenville. The particular office to be filled is referenced by Act No. 289 of the 1971 Acts and Joint Resolutions of South Carolina at page 381 which states in part that:

the magistrates for Greenville County shall be as follows: Two for the City of Greenville . . . the two magistrates located in the City of Greenville . . . shall have criminal and civil jurisdiction through the whole of Greenville County . . .

Elections such as the one to be held in Greenville are regularly held in many counties for the purpose of nominating candidates for the office of magistrate. Such advisory elections were referred to by the South Carolina Supreme Court in [Young v. Sapp](#), 167 S.C. 364, 166 S.E. 354 (1932). These nominations do not conflict with any provision of South Carolina law, but, as a matter of undisputed fact, the nomination of a candidate for magistrate by any political party is simply a suggestion to the Governor of a suitable person to be appointed by him as magistrate. Pursuant to [Article V, Section 23 of the Constitution of this State](#) which declares that:

the Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law . . .;

the Governor may accept or reject any nomination as he sees fit. See: [Salley v. Smith, et al.](#), 201 S.C. 338, 23 S.E.2d 6 (1942); [Weston v. Williams, et al.](#), 190 S.C. 112, 2 S.E.2d 381 (1939); [McKnight v. Smith, et al.](#), 182 S.C. 378, 189 S.E. 361 (1937); [Young v. Sapp, et al.](#), *supra*.

As to your question concerning restricting those eligible to run as candidates and those eligible to vote for such candidates, it has been stated that:

the right to become a candidate for election to public office is a valuable and fundamental right, and has even been held to be a property right. . . . The right should not be prohibited or curtailed except by the plainest provisions of law. . . . 29 C.J.S., [Elections](#), Section 130, p. 378.

In association with this, the court in [Thompson v. Dickson](#), 202 Or. 394, 275 P.2d 749 (1954) stated that a restriction requiring a candidate to reside in a district in which he is elected is in derogation of the common law and therefore shall be expressly stated. There is no express statutory or constitutional provision requiring the magistrate for the City of

Greenville to reside in the City. Furthermore, such a holding would also be unacceptable in light of the fact that the magistrate in the City of Greenville has civil and criminal jurisdiction throughout Greenville County.

*2 Even though the situation here is not strictly dealing with a candidate for election to public office, in light of the previous discussion of the fact that an advisory election for the office of magistrate is not binding but instead is a mere suggestion to the Governor of a suitable person to be appointed as magistrate, this office has been informed that public funds are being spent in association with this election and therefore it would be difficult for the County to justify the denial of the privilege of offering for office or voting for such office to qualified individuals. Therefore, as to your questions concerning the propriety of restricting those eligible to offer as a candidate to fill a magisterial office for the City of Greenville, and the propriety of restricting those individuals eligible to vote for such candidates to residents of the City of Greenville, it is the opinion of this office that it would be improper to place such restrictions on these individuals. Therefore, all qualified electors of Greenville County would be eligible to offer for the position of magistrate and to vote for those offering.

With best wishes, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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