

1975 WL 28967 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 30, 1975

*1 C. W. Derrick, Esq.
Derrick and Derrick
105 Harlee Street
Marion, S. C. 29571

Dear Mr. Derrick:

Your recent letter of June 23, 1975, has been referred to me by Deputy Attorney General Coleman for reply. You have inquired as to whether Section 150405.1, Code of Laws of South Carolina, 1962, as amended would authorize an associate probate judge appointed pursuant to same to issue marriage licenses, handle estates of deceased persons, etc.

Section 15-405.1 provides in pertinent part as follows:

'For any county, upon request of the probate judge, the Governor may appoint one or more associate probate judges for matters relating to mental illness and retardation . . . and (d) such other duties in the probate court jurisdiction as may be assigned to him by the probate judge.'

While it might appear that subsection (d) would authorize an appointed associate probate judge to exercise jurisdiction in matters other than those relating to mental illness and retardation, the plain meaning of Section 15-405.1 is quite to the contrary. We are of the view that an associate probate judge who is appointed pursuant to the above-referenced provision may exercise jurisdiction only for matters relating to mental illness and retardation.

'The probate court is a court of limited jurisdiction owing its present existence to creation by statute, rather than the Constitution, and a such, can exercise only such powers as are directly conferred upon it by legislative enactment and such as may be necessarily incident to the execution of the powers expressly granted.' Greenfield v. Greenfield, 245 S.C. 604, 141 S.E. 920 (1965).

It would appear, then, that the jurisdiction conferred by 15-405.1 is limited to matters relating to mental illness and retardation. Therefore, it must be concluded that Section 15-405.1(d) would not authorize an associate probate judge to issue marriage licenses, handle estates of deceased persons, etc.

With best wishes, I am,

H. Laurence Moore
Law Clerk

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