

1972 WL 25246 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 20, 1972

*1 The Honorable David W. Keller, Jr.
Chairman
Florence County Democratic Party
229 Coit Street
P. O. Box 109
Florence, S. C. 29501

Dear Mr. Keller:

Thank you for your letter of March 13, 1972 which has been referred to me for reply, and in which you make the following inquiry:

‘ . . . whether a person not an attorney may have his name on the ballot for Florence or Lake City magistrate in spite of the statute setting up the Florence County Courts of Limited Jurisdiction.’

The discussion below confirms our telephone conversation of March 17, 1972 in which you were advised substantially of the following:

Sections 43–771 through 43–780.4 are found in Chapter 5, Article 19, Title 43 of the 1962 Code of Laws of South Carolina and the 1971 Supplement to the Code. These sections are local provisions of Title 43, which Title deals with Magistrates and Constables. The Sections which make up Article 19 provide for the magistrates of Florence County. § 43–771 provides for the location of magistrates in Florence County. Among the magistrates so provided are provisions for a magistrate in the City of Florence and one at Lake City. The Act which was codified in this Section was amended in 1962 and 1967. The only amendment of § 43–771 prior to 1962 was an amendment in 1947.

Act #407 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina, Regular Session of 1957 is entitled, ‘An Act To Create Florence County Courts of Limited Jurisdiction; To Prescribe Their Powers and Duties.’ This Act is codified in the 1962 Code in Title 15 (courts), Chapter 18 (Courts of Florence County), Article 2 (Florence County Courts of Limited Jurisdiction), Sections 15–1621 through 15–1621.31.

Section 15–1621 of the 1962 Code simply establishes a new court in Florence County known as the court of limited jurisdiction and provides that the court shall be for the cities of Florence and Lake City and the following adjacent territories: The townships of Florence, Black Swamp (the original Act reads Back Swamp), Jefferies, McMillian, Cain, Pee Dee, Lake, Lee, Lake City, Motts, Lynch, Effingham, James Cross Roads, Cartersville, Timmonsville, Ebenezer and Tans Bay. The words in this section ‘ . . . a civil court of limited jurisdiction . . . ’ should be read along with § 15–1621.3 which provides that the judges shall have the ‘ . . . jurisdiction, power and authority, both criminal and civil, conferred upon magistrates generally throughout the county, . . . ’ (emphasis added).

Section 15–1621.1 provides that there shall be two judges of the courts of limited jurisdiction established in § 15–1621. The Section also provides that these judges are to be ‘ . . . attorneys resident within the jurisdictional limits thereof, . . . ’ The section also provides for the method of appointment of these judges by providing they ‘ . . . shall be appointed and commissioned by the Governor with the advice and consent of the Senate . . . ’ This section also appears to establish the clear intention of the General Assembly in establishing the courts of limited jurisdiction with the provision that ‘ . . . The judges provided herein shall be in

lieu of the magistrates for Florence and Lake City provided for by § 43–771, . . .’ (emphasis added). It is noted that the Section of Title 43 dealing with appointment of magistrates in Florence County is specifically mentioned in instant Section. This section further provides the jurisdiction of the judge of the court of limited jurisdiction in Florence is of ‘. . . those cases arising in School Districts No. 1 and No. 4 . . .’ and the jurisdiction of the judge of the court of limited jurisdiction in Lake City is of ‘. . . those cases arising in School Districts No. 2 and No. 3 . . .’ The last sentence of this section tends to reinforce the ‘. . . in lieu of . . .’ provision stated above with the words that these judges ‘. . . shall hold court simultaneously and continuously as formerly done by the two magistrates herein named (the magistrates for Florence and Lake City).’ (emphasis and parentheses added.)

*2 Act #407 as referred to above provides in Section 32 as follows: ‘Repeal—All acts or parts of acts inconsistent herewith are repealed.’

Notice is taken of the fact that the 1962 and 1967 Acts mentioned supra amending § 43–771 were enacted subsequent to the enactment of the 1957 Act which created the Florence County Courts of limited jurisdiction and therefore may appear to repeal by implication the 1957 act. Notwithstanding this possibility, it is believed that the 1962 and 1967 amendments are not clear enough to constitute an implied repeal. Since the Florence County Courts of limited jurisdiction were so clearly provided for in § 15–1621 and all acts or parts of acts inconsistent therewith were specifically repealed and since the purpose of the 1962 and 1967 Acts, respectively, appears to have been solely to transfer a magisterial district and to add a magistrate at Mars Bluff, it would not appear reasonable to conclude that the General Assembly by implication would undo without specific language what had been done earlier in clear language. It is well settled that repeal by implication is not favored in the law and should not be considered a repeal unless no other reasonable construction can be applied.

In summary, it is the opinion of this Office, upon reading all the acts relating to the matter, that it was the intent of the General Assembly to create two courts and two judges of limited jurisdiction to take the place of the Florence magistrate and the Lake City magistrate. The two positions so created are not that of magistrate, although the powers and procedures are essentially the same as those of magistrates. It follows that the positions of Florence magistrate and Lake City magistrate no longer exist—even though there may have been appointments subsequent to the 1957 Act of persons referred to as magistrates of the two magisterial districts.

In view of the foregoing, it is the further opinion of this Office that any person who qualifies for either position involved must be an attorney.

Yours very truly,

James C. Harrison, Jr.
Assistant Attorney General

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