



HENRY McMASTER
ATTORNEY GENERAL

September 24, 2008

Ms. Julie B. Boland
South Carolina Judicial Department
1015 Sumter Street, Suite 101
Columbia, South Carolina 29201

Dear Ms. Boland:

We received your letter requesting an opinion of this Office on behalf of the South Carolina Judicial Department. You stated that you have been unable to locate statutory bond requirements for Supreme Court Justices, Judges of the Court of Appeals, Judges of the Circuit Courts, and Judges of the Family Courts. You asked whether those Justices and Judges are required to have individual bonds, or whether they can be covered under the Judicial Department's blanket bond. We further understand from our conversation with you that the Judicial Department currently has a blanket bond covering all of its employees. You stated that the blanket bond covers judges since they are listed as employees.

Law/ Analysis

S.C. Code Ann. Section 8-3-60 provides in part as follows: "It shall be unlawful for any person to assume or attempt to assume the duties of any office *for which a bond is required*, without having given the bond required..." (emphasis added). Section 8-3-70 further provides as follows: "No executive, judicial or other officer, elected or appointed to any office in the State, shall be entitled to receive any pay or emoluments of office until he shall have been duly commissioned and qualified and shall have given bond *when so required to do by law*." (emphasis added).

Some public officers are statutorily required to give bond. For example, S.C. Code Ann. Section 14-17-40 requires Clerks of Court to enter into bond before receiving their commissions. Some judges are required by statute to give bond. Pursuant to S.C. Code Ann. Section 14-23-1050, Judges of Probate must give bond. Pursuant to S.C. Code Ann. Section 22-1-150, Magistrates must enter into bond.

However, our research has disclosed no comparable provision in the Code requiring that bond be given by Justices of the Supreme Court or Judges of the Court of Appeals, Circuit Courts, and

Family Courts. S.C. Code Ann. Section 14-3-10 through 14-3-150 addresses, *inter alia*, the composition of the Supreme Court and qualification by the Justices. It contains no requirement that the Justices give bond. Similarly, no bond requirement for Judges of the Court of Appeals is found in S.C. Code Ann. Section 14-8-10 through 14-8-130. Section 14-5-100 sets forth the process for qualification by a circuit judge. It states that “[t]he circuit judges of this State, upon their election, shall qualify by taking the oath...and shall forthwith enter upon their duties.” No mention is made of giving bond as part of the qualification process. Likewise, our research has disclosed no statutory bond requirement for Family Court judges.

We were also unable to locate any Rule of Court requiring individual bonds for the Justices and Judges you inquired about. Moreover, the Constitutional provision concerning the qualifications of Justices of the Supreme Court and Judges of the Court of Appeals and Circuit Courts, S.C. Const. Article V, Section 15, contains no reference to any bond requirement.

We now turn to the second part of your question: whether those Justices and Judges may be covered by a blanket bond procured by the Judicial Department. Section 8-11-20 deals with blanket departmental bonds for certain departments of the State government. It stipulates the amount of bond required for the following employees: clerks in the office of the Secretary of State; clerks in the office of the Comptroller General; clerks in the office of the State Treasurer; clerks in the office of the State Superintendent of Education; stenographers or typists in the office of the State Treasurer; Assistant Attorneys General; and accountants appointed by any of those departments. Section 8-11-20 further provides that instead of individual bonds for those employees, blanket bonds may be secured by their respective departments. It provides as follows:

In lieu of the individual bonds as provided above, the heads of the respective departments referred to in this section may, with the approval of the State Budget and Control Board, procure bonds in form to be approved by the Attorney General covering all persons employed in or by such department, including, if practical, such accountants mentioned above. In such event the penal sum of such bonds shall be in such amount as the State Budget and Control Board shall approve.

Any individual or blanket bonds given pursuant to the requirements of this section shall be executed by a fidelity or surety company licensed to do business in this State. In all cases, the premium or annual payment required to keep such bonds in force and effect shall be paid by the State Treasurer on the warranty of the Comptroller General.

The Judicial Department is not one of the departments listed in Section 8-11-20. Therefore, the process described therein is not directly applicable. However, another Section of the Code provides a mechanism by which the Judicial Department may secure a blanket bond if it desires to do so.

S.C. Code Ann. Section 1-11-180 describes additional powers of the Budget and Control Board. It provides in relevant part as follows:

(A) In addition to the powers granted the Budget and Control Board under this chapter or any other provision of law, the board may:

...
(4) approve blanket bonds for a state department, agency, or institution including bonds for state officials or personnel. However, the form and execution of blanket bonds must be approved by the Attorney General...

Section 1-11-180 (B) provides that “[t]he Budget and Control Board may promulgate regulations necessary to carry out this section.”

The term “state department” or “state agency” most often refers to executive branch departments and agencies. However, for purposes of this statute, it is our opinion that the term “state department, agency, or institution” may be read broadly to include the Judicial Department. In other contexts, when the General Assembly has intended the courts to be excluded, it has stated so specifically. For instance, in a prior opinion of this Office dated May 7, 1992, we examined the definition of “agency” or “state agency” for purposes of the Administrative Procedures Act. We noted that S.C. Code Section 1-23-10 (1) defines “agency” or “state agency” for purposes of that article as follows: “each state board, commission, department, executive department or officer, *other than the legislature or the courts*, authorized by law to make regulations or to determine contested cases...”¹ (Emphasis added.) Op. S.C. Atty Gen., May 7, 1992. In contrast, Section 1-11-180 contains no similar exclusion of the courts.

In other contexts, this Office has reasoned that a court is included within the meaning of the term “public body.” In an opinion dated May 27, 1980, we examined the term “public body” for purposes of the Freedom of Information Act (FOIA). The term “public body,” in the context of FOIA, was defined in S.C. Code Section 30-4-20(a) to include “any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State...or any organization, corporation or agency supported in whole or in part by public funds or expending public funds....” We concluded that a municipal court would be considered such a public body. Op. S.C. Atty Gen., May 27, 1980.

¹S. C. Code Ann. Section 1-23-10 (1) was amended subsequent to the May 7, 1992 opinion. The current definition of “agency” or “State agency” also excludes the South Carolina Tobacco Community Development Board and the Tobacco Settlement Revenue Management Authority, in addition to excluding the legislature and the courts.

Ms. Boland
Page 4
September 24, 2008

For the limited purposes of S.C. Code Section 1-11-180, it is our opinion that the Judicial Department may be considered a "state department, agency, or institution," and may thus obtain a blanket bond with the approval of the Budget and Control Board. In an opinion dated July 27, 1962, this Office approved the form of a blanket bond for the South Carolina Forestry Commission. Although there were no statutes requiring any of the officers or employees of the Forestry Commission to be bonded, the bond was secured upon request of the Forestry Commission and approved by the Budget and Control Board under provisions of Section 87 of the 1962-1963 Appropriations Act. Op. S.C. Atty Gen., July 27, 1962. We assume that it has been the practice of the Budget and Control Board to approve the blanket bonds requested by the Judicial Department. We also assume that the expenditure of funds by the Judicial Department for a blanket bond has been authorized, a separate issue which we do not address in this opinion.

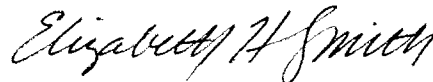
In the case of Justices of the Supreme Court and Judges of the Court of Appeals, Circuit Courts, and Family Courts, it does not appear that the Code requires these judicial officers to give bond. However, if the Judicial Department chooses to, it may procure a blanket bond with the approval of the Budget and Control Board.

Conclusion

Unlike other public officials, such as clerks of court, probate judges, and magistrates, who are required by statute to give bond, the Justices and Judges about which you inquired are not required by statute to have individual bonds. If the Judicial Department wishes to secure a blanket bond for employees of the Department, it is our opinion that the Department may do so pursuant to S.C. Code Section 1-11-180.

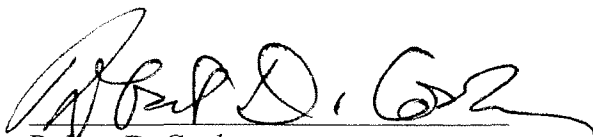
Sincerely,

Henry McMaster
Attorney General



By: Elizabeth H. Smith
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General