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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 2, 2002

Helen Ann S. Thrower
Staff Counsel
Labor, Commerce and Industry Committee
South Carolina House of Representatives
P.O. Box 11867
Columbia, South Carolina 29211

Re: S.C. Code Ann. §14-23-1040

Dear Ms. Thrower:

In a letter to this Office, you have requested "a formal opinion ... interpreting §14-23-1040 of the South Carolina Code." By way of background you indicate that "[t]he statute should have received pre-clearance from the Justice Department prior to enactment, but did not. In light of this, you ask for our "interpretation of the validity of this statute."

Effective January 1, 1989, the General Assembly amended Section 14-23-1040 to provide that, to be eligible to hold the office of probate judge, a person must have "a four-year bachelor's degree from an accredited post-secondary institution or if he has received no degree he must have four years' experience as an employee in a probate judge's office in this State." Such an amendment required that pre-clearance be obtained from the United States Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965. The United States Supreme Court has held that "[f]ailure to obtain ... preclearance renders the change unenforceable." Clark v. Roemer, 500 U.S. 646 (1991). This holding by the Supreme Court appears to be applicable to the 1989 amendments to Section 14-23-1040.

Sincerely,

David K. Avant
Assistant Attorney General

Request Letter