

7255 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 8, 2001

The Honorable Herb Kirsh
Member, House of Representatives
Box 31
Clover, South Carolina 29710

Dear Mr. Kirsh:

By your letter of October 5, 2001, you have requested an opinion on behalf of one of your constituents regarding South Carolina Code of Laws Section 15-1-290. As you are aware, the Supreme Court of South Carolina struck down as unconstitutional Section 15-1-290 for its violation of equal protection guarantees. See Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979). However, the General Assembly has not yet repealed the statute. You ask whether a probate judge must apply Section 15-1-290 in a proceeding because it has not been repealed.

In a prior opinion from then Attorney General Daniel McLeod, this Office advised a planning commission on its obligation to follow the Code of Laws, except under certain circumstances: "Since the statute is upon the books, it must be complied with, even though it may appear to be unconstitutional, *until the Supreme Court of this State declares it to be unconstitutional.*" OP ATTY. GEN. Feb 11, 1959 (emphasis added). In Ramey, the highest court of the State declared Section 15-1-290 to be unconstitutional. As the final arbiter of the constitutionality of a statute, the order of the Supreme Court must be obeyed by the lower courts, regardless of whether the General Assembly has repealed the statute. Thus, without comment on the applicability of Section 15-1-290 to your constituent's case, we would advise that a probate judge must abide by the ruling of the Supreme Court of South Carolina.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Susannah R. Cole".

Susannah Cole
Assistant Attorney General

Request Letter