

The State of South Carolina



Office of the Attorney General

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July 26, 1989

The Honorable Evelyn W. Shelley
Judge of Probate, Beaufort County
Post Office Box 1083
Beaufort, South Carolina 29901-1083

Dear Judge Shelley:

By your letter of June 21, 1989, referencing Section 14-7-820, Code of Laws of South Carolina (1988 Cum. Supp.), you have asked whether a Probate Court Clerk of Court or Deputy Clerk of Court may serve as a juror in the Court of Common Pleas or General Sessions, magistrate's or coroner's court, or the like. You have also advised that the Probate Court of Beaufort County is not housed in the Beaufort County Courthouse but is housed in a county office building one block away.

Section 14-7-820 of the Code provides:

No clerk or deputy clerk of the court, constable, sheriff, probate judge, county commissioner, magistrate or other county officer, or any person employed within the walls of any courthouse is eligible as a juror in any civil or criminal case; provided, that no person may be disqualified under this section except as determined by the court.

This Code section has been construed by this Office several times, all prior to the 1986 act of the General Assembly which added the proviso at the end of the section. See, Act No. 340, 1986 Acts and Joint Resolutions.

The Honorable Evelyn W. Shelley

Page 2

July 26, 1989

In an opinion dated January 15, 1982, this Office opined that employees of the Charleston County Register of Mesne Conveyances, whose office is located in a courthouse annex rather than the actual courthouse, would be exempt from jury duty by the terms of Section 14-7-820 of the Code. Citing the language about individuals "employed within the walls of any courthouse," this Office stated that

this language exempts those employees notwithstanding the fact that they are not physically housed in the courthouse proper but are, instead, located in the courthouse annex. The intent of the provision is to prevent persons who are closely associated with the court (either by way of physical location or by the nature of their work) from sitting as jurors and to prevent the regular functioning of the county from being interrupted

A copy of this opinion is enclosed. But see Op. Atty. Gen. dated April 21, 1980, a copy of which is enclosed. It would appear that the conclusions of the opinion dated January 15, 1982, could well apply to probate court personnel, including clerks and deputy clerks.

Because Section 14-7-820 refers to a "clerk or deputy clerk of the court," it is also helpful to refer to Section 14-7-30 of the Code, which provides:

The word "clerk," as used in this chapter signifies the clerk of the court where the action is pending, unless otherwise specified. 1/

Applying the plain meaning of the term "clerk," as must be done in the absence of ambiguity, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), it would appear that clerks of the circuit courts and their deputies would be ineligible to serve as jurors in the Courts of Common Pleas and General Sessions; the clerk or deputy clerk of a magistrate's court would be ineligible to serve as a juror in that magistrate's jury trials; and so forth. However, the proviso at the end of Section 14-7-820 must also be considered.

1/ See also Section 14-1-40 of the Code, which contains a virtually identical definition of the term "clerk."

The Honorable Evelyn W. Shelley
Page 3
July 26, 1989

As noted, the proviso provides that "no person may be disqualified under [Section 14-7-820] except as determined by the court." It is also helpful to consider the terms of Section 14-7-1010 of the Code in relation to the proviso:

The presiding judge shall at each term of court ascertain the qualifications of the jurors.

The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law. The clerk of court shall maintain a list of all jurors excused or disqualified and the reasons provided therefor by the presiding judge, which list must be signed by the presiding judge. In no case shall the jury commissioners excuse or disqualify any juror for any reason whatsoever; provided that the clerk of court may, without court approval, transfer any juror to a subsequent term upon good and sufficient cause.

It is helpful to note that Section 14-7-1010 was most recently amended by Act No. 340 of 1986, the same act which amended Section 14-7-820. Where, as here, separate statutes relate to the same subject matter, it is appropriate to construe them together and give effect to each, if at all possible. Columbia Gaslight Co. v. Mobley, 139 S.C. 107, 137 S.E. 211 (1927). Thus, the presiding judge would appropriately determine whether a prospective juror should be excused or disqualified. 2/

2/ Section 14-7-820 is construed in State v. Reed, 293 S.C. 515, 362 S.E.2d 13 (1987), which states that

South Carolina Code Ann. § 14-7-820 (Supp. 1986) makes any person employed within the walls of a courthouse ineligible as a juror in any civil or criminal case. Once a trial judge determines a potential juror is employed in any capacity within a courthouse he must disqualify that person from jury service.

293 S.C. at 518. The position of employment of the potential juror in this case was not identified.

The Honorable Evelyn W. Shelley
Page 4
July 26, 1989

Conclusion

Applying the foregoing to the questions you have raised, it would appear that a clerk or deputy clerk of a probate court, only on that basis, would not necessarily be automatically disqualified from service as a juror in the Court of Common Pleas, Court of General Sessions, magistrate's court, or the like.^{3/} On the basis of being employed "within the walls of any courthouse," however, these individuals may be disqualified under the facts presented by you, based on the opinion of January 15, 1982. In any event, only the court (i.e., presiding judge) would have the authority to determine that an individual would be disqualified from service as a juror, based on Section 14-7-1010 and the proviso in Section 14-7-820.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions

^{3/} On an individual basis, some other reason may exist to exempt or disqualify a potential juror. Such would be a question of fact and outside the scope of an opinion of this Office.