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March 21, 1986

The Honorable Marshall B. Williams
Senator, District No. 40
101 Gressette Building
Columbia, South Carolina 29202

Dear Senator Williams:

You have asked whether a deputy or associate probate judge would be required to take a leave of absence to become a candidate for the office of probate judge. In this regard, you have provided to this Office the policy of Orangeburg County with respect to political activity by employees of that county. For the reasons following, it is the opinion of this Office that a deputy or associate probate judge would not be required to take a leave of absence to become such a candidate.

The policy of Orangeburg County referred to above is found in Section 2-263 (g) of the county code of ordinances; in pertinent part, it is stated:

Any employee in the classified service offering for a political office must ask for and be granted a leave of absence without pay commencing on the date of qualification for the political office and continuing until voting results are certified and declared official. Should the employee decide to return to the classified service, the employee will be granted tenure rights. Employees are exempted from taking a leave of absence until such time as a final closing date for qualification has hereinafter been determined by the courts. ...

We note at the outset that it is doubtful that a probate judge, as an elected official, or a deputy or associate probate judge, selected by the probate judge to serve at his pleasure, would be considered a classified county employer thus subject to the county regulation. Probate judges are within the unified judicial system. Election of probate judges and selection of

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deputy or associate probate judges are provided for in Chapter 23 of Title 14, Code of Laws of South Carolina (1976, as amended). Article VIII, Section 14 of the State Constitution provides in pertinent part that

[i]n enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside: ... (4) the structure for and the administration of the State's judicial system;

See also Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981).

Moreover, Canon 7 of the Code of Judicial Conduct, adopted as Rule 33 by the South Carolina Supreme Court, governs political activities of all judges, including deputy or associate probate judges. The Advisory Committee on Standards of Judicial Conduct has issued opinion no. 2-1982, construing the relevant provisions of Canon 7 as to an associate probate judge retaining his/her position while engaged in a campaign for the position of probate judge. The conclusion of the opinion, enclosed herewith, is that a judge may properly retain his/her judicial position while a candidate for election to judicial office provided he/she complies with the restrictions enumerated in Canon 7 of the Code of Judicial Conduct.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you need additional assistance or clarification.

Sincerely,


Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions