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June 11, 1987

The Honorable Irene K. Rudnick  
Member, House of Representatives  
Post Office Box 544  
Aiken, South Carolina 29802

Dear Representative Rudnick:

By your letter of June 9, 1987, you have indicated that the office of Register of Mesne Conveyances in Aiken County is now vacant, due to the death of Mrs. Virginia Eargle, the incumbent. You have asked how this vacancy is to be filled.

The office of Register of Mesne Conveyances for Aiken County was created by Act No. 133, 1975 Acts and Joint Resolutions. The initial office-holder was appointed by the Aiken County Legislative Delegation to serve until a successor could be elected in the general election of November 1976. Section 4 of Act No. 133 provides:

In case of any vacancy in the office of register of mesne conveyances for Aiken and Lexington Counties, the vacancy shall be filled by appointment in the manner of the original appointment for the unexpired portion of the term only.

This provision was codified in the 1962 Code of Laws but was deleted as a local law in the 1976 codification. Whether this provision is still effective must be determined.

Act No. 95 of 1977 was the act by which the 1976 Code of Laws was adopted and declared to be the only statutory law of

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this State. Section 2 specifically provides:

The provisions of this act shall not be construed so as to repeal local laws carried in the 1962 Code and acts amendatory thereto, including those referring to groups of municipalities or counties and those identified by population tied to a particular census.

Thus, the special provisions for Aiken County would not be viewed as repealed even though those provisions are not codified in the 1976 Code of Laws.

Other than the provisions of the local law for Aiken County, it could be argued that either Section 4-11-20 or Section 1-3-220 of the Code would be applicable in this instance, since the register of mesne conveyances is a county office. However, it must be noted that the local law for Aiken County was adopted subsequent to either general law and provides specifically for filling a vacancy in the office of Aiken County. Applying various rules of statutory construction, the provisions of the local law would be deemed controlling. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980) (in case of conflict, specific statute prevails over general); Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943) (most recent expression of the legislature is the law).

It could be argued that Act No. 133 of 1975 is violative of Article III, Section 34 (IX) and Article VIII, Section 7 of the State Constitution, as it is a law specifically for Aiken County and thus should not be followed. It is the policy of this Office to presume that an act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. It is solely within the province of the courts of this State to actually declare an act unconstitutional.

This Office has previously taken the position that creation of a register of mesne conveyances can be done only by amending Section 30-5-10 of the Code, which this Office deems to be a general law containing special provisions. County councils are not authorized to adopt ordinances which amend general laws. As is stated in an opinion of this Office dated May 18, 1979 by the

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Honorable Karen L. Henderson, then Senior Assistant Attorney General:

Such enactment [by the General Assembly to amend Section 30-5-10] would not violate the "no laws for a specific county" language of Article VIII, Section 7 of the South Carolina Constitution because it does not relate to functions, duties or powers reserved to counties [see, Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975)] and it would not violate the "no special law where a general law can be made applicable" language of Article III, Section 34 subdivision ix of the State Constitution because it constitutes a "special provision in a general law" expressly allowed by Article III, Section 34, subdivision x. See e.g., Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933).

We are not aware of any judicial determination that such an act has violated Article VIII, Section 7 or Article III, Section 34. The lack of judicial declaration along with the presumption that all acts of the legislature are constitutional until declared otherwise is the basis for determining that Act No. 133 of 1975 should still be followed.

Whether the Judge of Probate of Aiken County should serve as a temporary replacement for the Register of Mesne Conveyances has also been asked, since the Register performs some of the duties handled by clerks of court in other counties. See Section 30-5-10 of the Code. In the event of a vacancy in the office of clerk of court, the judge of probate serves temporarily until an appointment can be made pursuant to Section 4-11-20 of the Code. See Section 14-17-30 of the Code. However, we are aware of no authority which would confer the authority upon a probate judge to act as register of mesne conveyances in a similar situation.

Based on the foregoing, it is the opinion of this Office that the vacancy in the office of Register of Mesne Conveyances in Aiken County would be filled by appointment of the Aiken County Legislative Delegation for the unexpired portion of the term. This result is in accordance with an opinion of this

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Office dated May 24, 1976 (enclosed) which mentioned the filling of a vacancy in a discussion of how to fill the office in the event its incumbent should be suspended from office.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosures: Ops. Atty. Gen. May 24, 1976  
May 18, 1979

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions