

1984 WL 249959 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1984

*1 John G. Eaddy
Chairman
Clarendon County Republican Party
Route 3
Box 34
Manning, South Carolina 29102

Dear Mr. Eaddy:

In a letter dated June 29, 1984 you requested an opinion as to the constitutionality of R569 of 1984. Such legislation provided for the continued temporary performance of the duties of probate judge in Clarendon County by the clerk of court and for the election of a probate judge for Clarendon County.

In your letter, you referenced the opinion of this office dated May 16, 1984 to State Representative Alex Harvin which was written in response to his question concerning the status of Act No. 7 of 1931. Such legislation abolished the office of Probate Judge for Clarendon County. All duties of such office were thereafter devolved upon the Clarendon County clerk of court.

In the opinion to Representative Harvin, reference was made to the constitutional mandate of [Article V, Section 1 of the State Constitution](#) for a unified judicial system in this State. It was also stated in such opinion that in [State ex rel. McLeod v. County of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 \(1776\)](#) the South Carolina Supreme Court specifically determined that probate courts are a part of this State's unified judicial system. In [Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604, 605\(181\)](#), the Court stated that ' . . . statutes which extend or perpetuate a non-unified system or defeat the purpose of [Article V](#) must be deemed to be unconstitutional.' In keeping with the mandate of a unified judicial system, Act No. 690 of 1976, now codified at [Sections 14-23-1010 et seq. of the Code of Laws of South Carolina](#), 1976, as amended, was enacted. Such legislation provided that in each county in this State the office of probate judge must exist. Referencing Act No. 690, this office in the opinion dated May 16, 1984 determined that Act No. 7 of 1931 was impliedly repealed by such legislation.

As a result, R569 was enacted by the General Assembly during this past legislative session.¹ Such may be considered as transitional legislation to remedy the problem resulting from the repeal of Act No. 7 of 1931. The South Carolina Supreme Court in [Duncan v. County of York, et al., 267 S.C. 327, 228 S.E.2d 92 \(1976\)](#) recognized that in certain situations legislation is necessary to provide for orderly transition from one system to another. Recognizing the presumed constitutionality of legislative acts, the Court in [Duncan](#) refused to declare the transitional legislation before it invalid.

Generally, every reasonable presumption must be made in favor of the constitutionality of an act and only in circumstances where legislation clearly violates specific constitutional provisions beyond a reasonable doubt will such legislation be declared unconstitutional. [Johnson v. Piedmont Municipal Power Agency, 277 S.C. 345, 287 S.E.2d 476 \(1982\)](#). Referencing such, R569 must be presumed to be constitutional. [Rosenthal v. Unarco Industries, Inc., 278 S.C. 420, 297 S.E.2d 638 \(1982\)](#).

*2 In responding to your inquiry, consideration should be given to any possible problems pursuant to [Article III, Section 34 of this State's Constitution](#). Such provision states in part that ' . . . where a general law can be made applicable, no special law shall be enacted . . . ' However, there appears to be no [Article III, Section 34](#) problem associated with R569. As to the situation

in Clarendon County, no general law can be made applicable. The situation in such county where presently there is no probate judge is unique in this State. Such special circumstances, therefore, could not be remedied by any general law.

R569 provides for the election of a probate judge for Clarendon County ‘. . . at the same time that successors to members of the Senate of South Carolina are elected, and his successor must be elected in the general election of 1988 and every four years thereafter.’ Referencing the fact that the Legislature has taken action recently toward authorizing Senate elections this fall, apparently the election of the probate judge for Clarendon County will also be set for the fall. The fact that the term of office for the probate judge will not be uniform or contemporaneous with the terms of other probate judges is of no significance. Pursuant to [Section 14-23-1020, Code of Laws of South Carolina](#), 1976, as amended, there is no requirement that all probate judges in this State serve uniform terms.

In conclusion, it is the opinion of this Office that R569 is constitutional. If there is anything further, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

Footnotes

¹ Included in such act was a provision specifically repealing Act No. 7 of 1931.

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