

1981 S.C. Op. Atty. Gen. 92 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-65, 1981 WL 96591

Office of the Attorney General

State of South Carolina

Opinion No. 81-65

July 8, 1981

**\*1 SUBJECT: County Officers—Payment of Certain State Appropriated Funds.**

The salary supplement provided by House Bill 2461 for the Probate Judge is to be paid to the Clerk of Court of Clarendon County.

To: Honorable Gerald W. Burnett  
Deputy Comptroller

QUESTION:

House Bill 2461, the Appropriations Bill for the 1981–1982 fiscal year, provides a salary supplement for designated county officers, including the Clerks of Court and the Judges of the Probate Court. In Clarendon County the office of the Judge of Probate was abolished by a 1931 Act and the duties and jurisdiction of the Probate Court transferred to the Clerk of Court. Under such circumstances, is the Clerk of Court to receive the salary supplement appropriated for the office of the Probate Judge?

APPLICABLE LAW:

Section 120 of House Bill 2461; Act 7, Acts of 1931; § 14–23–1010, et seq., of the 1976 Code of Laws.

DISCUSSION:

The 1931 Act did not abolish the Probate Court of Clarendon County. It abolished the office of the Judge of Probate and transferred the jurisdiction and duties of the Court to the Clerk of Court.

‘It must be borne in mind that the act does not abolish the Court of Probate for Clarendon County; it abolishes the office of Probate Judge for that County; but it devolves the duties and jurisdiction of that office on the Clerk of Court.’ [Ridgill v. Clarendon County](#), 188 S.C. 460, 199 S.E. 683.

Under that Act there is no existing office of the Judge of Probate Court in Clarendon County.

The General Assembly in 1976, by Act 690, now codified as § 14–23–1020, provided that:  
‘There shall be a judge of probate for each probate court. \* \* \*.’

This provision, however, has not been implemented in Clarendon County. Further, there is doubt whether this provision repealed the 1931 legislation that abolished the office of the Probate Judge.

‘Statutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute, or the intent of the legislature to repeal the earlier statute is implicit.’ [Rhodes v. Smith](#), 273 S.C. 13, 254 S.E.2d 49.

It is not necessary, however, to now consider that question because the provisions of the 1976 Act have not been implemented in Clarendon County.

Obviously, one person cannot at the same time hold two different county offices.

'No person shall hold two offices of honor or profit at the same time; provided, that this limitation shall not apply to officers in the militia, notaries public, or delegates to a Constitutional Convention.' [Article VI, § 3, South Carolina Constitution](#).

Having concluded that the office of Judge of Probate does not presently exist in Clarendon County, we next consider whether the General Assembly intends that the appropriation for the Probate Judge be paid to the Clerk. The Court held in [Ridgill v. Clarendon County](#), supra, that:

\*2 'But if the office be one already established with well defined duties, responsibilities and jurisdiction, and the discharge of the duties, and the assumption of the jurisdiction and responsibilities of the office are devolved upon another, who holds another office of grave responsibilities and onerous and exacting duties, it is a logical implication that the emoluments and compensation attached to the abolished office still attach to the office to which its duties have been transferred. \* \* \*'

It should be noted that this action was one by the Clerk of Court of Clarendon County for the fees payable to the Judge of Probate. The action was the direct result of the 1931 Act. The Court held that the Clerk was entitled to the fees payable to the Judge of Probate.

Here, the General Assembly separately appropriates the prescribed amount for both the Clerk of Court and the Judge of Probate for Clarendon County. The General Assembly is presumed to have knowledge of the existing conditions in Clarendon County. 'It is presumed that Legislature is familiar with prior legislation dealing with same subject when it passed law involved.' [Bell v. South Carolina State Highway Department](#), 204 S.C. 462, 30 S.E.2d 65.

The question logically follows of why appropriate the salary supplement for the office of the Judge of Probate for Clarendon County if the same is not to be paid to the Clerk of Court.

Additionally, the requirement is that the salary supplement be distributed monthly. Under this provision the Clerk could not receive any payments except those payable by reason of the nonexistence of the Judge of Probate's office.

CONCLUSION:

It is opinion of this office that the salary supplement provided by House Bill 2461 for the Probate Judge is to be paid to the Clerk of Court of Clarendon County.

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