

1982 S.C. Op. Atty. Gen. 41 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-37, 1982 WL 155007

Office of the Attorney General

State of South Carolina

Opinion No. 82-37

May 25, 1982

*1 Mr. Furman R. Gressette
Calhoun County Attorney
302 S. Railroad Avenue
St. Matthews, South Carolina 29135

Dear Furman:

Thank you for your letter of May 19 concerning the circumstances existing with respect to the Office of Probate Judge for Calhoun County.

Former Judge Gaskin resigned as Probate Judge, and Chief Justice Lewis, as shown by this order of May 14, 1982, then designated Judge Dawkins, the Probate Judge of Orangeburg County, to preside as Probate Judge for Calhoun County until further order. Judge Dawkins continues to serve as Probate Judge of Orangeburg County.

Your letter of May 19 raised the following questions:

'1. Is the aforesaid order of the Chief Justice sufficient authority for the Orangeburg County Probate Judge to take complete control of the office of Calhoun County Probate Judge barring the Calhoun County Clerk of Court as Calhoun County Probate Judge therefrom?'

In my opinion, the order is clearly sufficient authority for the Orangeburg County Probate Judge to assume custody of the Office of Probate Judge in Calhoun County and to exercise all of the functions of that office. The basis for the order of Judge Lewis is, as stated in it, [Article V, Section 4, of the Constitution](#), which provides, in part:

'The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system.'

The Probate Court is expressly made a part of the unified judicial system and the exercise of the constitutional authority of the Chief Justice is undoubtedly paramount to any statutory proceedings, such as that providing for vacancies in the Office of Probate Judge. Upon the resignation of Judge Gaskin, a vacancy did exist, and therefore the constitutional authority of the Chief Justice comes into play immediately and effectively acts to keep the office under the jurisdiction of a judicial officer.

The provisions of [Section 14-23-50 of the Code](#) of Laws, relating to the filling of vacancies in the Office of Judge of Probate, are still available, and that procedure should undoubtedly be placed in operation. The acting of the Clerk of Court as Probate Judge during the interim between the occurrence of the vacancy and the filling of the vacancy as provided in [Section 14-23-50](#) is subservient to the constitutional authority vested in the Chief Justice.

As I construe the order of the Chief Justice, it seems clearly within his constitutional authority, and the statutory provisions for the filling of vacancies by the Clerk of Court are subservient to it.

'2. If your answer to query 1 is yes, then does the Calhoun County Clerk of Court as Probate Judge have any liability for failure to perform the duties imposed on him by the Code?'

The answer to this is, in my opinion, that the Clerk of Court has no liability than can be asserted against him for failure to act as Probate Judge in view of the superior constitutional authority that has provided for an interim successor.

*2 '3. Who is responsible for the records removed from the office of Probate Judge?'

Without knowing the factual circumstances regarding the removal, it is impossible to express an opinion upon this. I have no knowledge of when any records were removed nor by whom they were removed.

'4. What effect would a marriage license issued by the Orangeburg County Probate Judge under the aforesaid order have on a marriage?'

Marriage licenses issued by the Orangeburg County Probate Judge while acting as the Calhoun County Probate Judge pursuant to Chief Justice Lewis' order of May 14, 1982, would have the same effect as if former Judge Gaskin had issued them during her incumbency. Under the order to which reference is made, the Orangeburg County Probate Judge is vested with all of the powers, duties and responsibilities normally exercised by the Calhoun County Probate Judge.

'5. When the Governor appoints the Calhoun County Probate Judge, with the aforesaid order effective, will the appointee be able to take the oath of office and be the Calhoun County Probate Judge?'

I would assume that when a new Probate Judge has been appointed, the order of the court would be rescinded. This is indicated by the wording of the order which provides for its continuance 'until the further order of the Chief Justice.'

With best wishes,

Very truly yours,

Daniel R. McLeod
Attorney General

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