

1981 WL 158056 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1981

*1 Mr. George A. Markert
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear George:

In a letter to this office you stated that special referees, who have been appointed to hear matters in those counties which do not have a master-in-equity, are concerned whether they have the authority to collect the fees authorized by [Section 14-11-310, Code of Laws of South Carolina](#), 1976, as amended. You specifically asked whether special referees were authorized to collect such fees.

Pursuant to [Section 14-11-10, Code of Laws of South Carolina](#), as amended, the General Assembly has established in each county the office of master-in-equity. Section 14-11-60, Code of Laws of South Carolina, 1976, as amended, states that: '(i)n case of a vacancy in the office of master . . . the circuit court or a judge thereof may appoint a special referee in any case who shall as to such case be clothed with all the powers of a master.'

I presume such statute is the authority for the special referees referenced in your letter and that you are referencing the situation that exists in several counties where no master-in-equity has ever been appointed following the enactment of Act No. 179 of 1979 which established such office.

In the case of [Bradford v. Byrnes, Governor, 221 S.C. 255, 70 S.E. 283 \(1952\)](#), the South Carolina Supreme Court approved the language of 42 Am. Jur., Public Officers, Sec. 134 which provided: '(a) vacancy may arise in an office newly created. The general rule governing the matter seems to be that when a law establishing an office takes effect a vacancy in the office at once exists, unless the language of the law imports futurity of selection, or unless other restrictions are imposed. Hence the term 'vacancy' applies to an existing office without an incumbent, although it has never been filled; for example, when a new county is created, the county offices, before they are filled, are considered as being technically vacant.' [221 S.C. 255 at 263](#).

Referencing such, and the previously-quoted provision of Section 14-11-60, [supra](#) which provides that a special referee has all the powers of a master-in-equity, in the opinion of this office, a special referee who has been appointed to hear matters in those counties which do not have a master-in-equity, is authorized to collect the fees established by [Section 14-11-310, supra](#).

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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