

1976 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4312, 1976 WL 22932

Office of the Attorney General

State of South Carolina

Opinion No. 4312

March 25, 1976

*1 The Honorable Thomas E. Smith, Jr.
Member
South Carolina Senate
100 Walnut Street
Pamplico, South Carolina 29583

Dear Tom:

Thank you for your letter of March 23, 1976, concerning the Act creating the Civil Court of Limited Jurisdiction for the City of Lake City (73 Acts 22) and asking the following:

1. Whether the Act is constitutional in light of certain decisions of the Supreme Court; and
2. Whether an individual may be recommended for appointment as judge of the court who is not an attorney.

The Act creating the court, in my opinion, having been enacted prior to April 4, 1973, continues in effect under Article 5, Section 22, of the Constitution of this State. In my opinion, the Act established a constitutional court. It was approved by the Governor on February 15, 1973.

The Act provides that the judge of the court ‘shall be an attorney resident within the jurisdictional limits thereof’ and, in my opinion, only an attorney may be appointed judge. The appointment of the judge is made by the Governor, subject to confirmation of the Senate, and, while the Governor may be persuaded by the outcome of an advisory election, he is not compelled to do so. In any event, he cannot appoint an individual who is not an attorney as a judge of the court, and the candidacy of a non-lawyer is therefore a futile gesture.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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