

1979 WL 43436 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1979

*1 Mr. J.B. Clements
Master-in-Equity
Box K
City-County Complex
Florence, South Carolina 29501

Dear Mr. Clements:

You have recently asked the opinion of this Office on several questions concerning your term as Master-in-Equity of Florence County which ends on August 3, 1979 and your next term which begins on August 4, 1979. You have stated that you were elected to both of these terms pursuant to Act No. 879 of the 1968 Acts and Joint Resolutions. The questions raised by you with regard to these terms are essentially as follows:

- (1) If the General Assembly fails to extend the abolition date for the office of master-in-equity [hereinafter referred to as master] beyond July 1, 1979, will my status as an elected official be protected?
- (2) If Senate Bill 402 is enacted, will any terms to which I have been elected be protected?
- (3) Is the extension of the office of the master-in-equity provided for in Senate Bill 402 optional for each county?

The office of master is created by §§ 14-11-10 et seq., Code of Laws of South Carolina, 1976, and is generally an appointive office. However, as noted in your correspondence, Section 4 of Act 879, supra, provides that the office of master in Florence County is an elective position. In *Ward v. Waters*, 184 S.C. 353, 192 S.E. 410 (1937), the Supreme Court, quoting with approval from *State v. Hough*, 103 S.C. 87, 87 S.E. 437, stated that:

... [t]hose holding offices created by the legislature hold them subject to the legislative will. The power that creates an office can impose such limitations and conditions upon the manner of filling it, and the tenure and the exercise of the duties of the office, and may modify or abolish any of these, or the office itself, as its wisdom may dictate, when no provision of the Constitution is contravened in doing so. *Ward*, supra, at 360-361.

Also see *Walpole v. Wall*, 153 S.C. 106, 150 S.E. 760 (1929); 67 C.J.S., "Officers," § 70. These authorities reflect that this above-stated rule is applied both to appointive and elective offices.

Article VII, Section 5 of Act No. 690, 1976 Acts and Joint Resolutions, provides that:

... The offices of master-in-equity, standing master and special referee shall be abolished on July 1, 1979,....¹

Also see generally Article V of the South Carolina Constitution, and specifically § 22 thereof. The intent of this language is clear, and it is also clear that this legislative mandate comes within the rule stated in *Ward*, supra.

Based on the foregoing authorities, it is the opinion of this Office that under the present circumstances, the term which you are currently serving as an elected officer will expire prematurely on July 1, 1979, when the office of master is

abolished pursuant to Act No. 690, supra. Also as a result thereof, the term which you are to begin on August 4, 1979, will be abrogated.

With regard to the remaining questions raised by you which are noted above as (2) and (3), this Office would not express any opinion in that Senate Bill 402 is pending in the General Assembly and may be substantially amended. However, it should be noted that the authorities cited herein may be applicable to the question concerning the affect of the passage of Bill 402 upon your terms.

Sincerely,

*2 James M. Holly
State Attorney

Footnotes

- 1 Note that Article XI, Section 2, Act No. 690, supra, permits the Supreme Court to delay for a period of up to one year the abolition of any "court." This opinion does not express any conclusion on whether this includes the office of master.

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