

1976 S.C. Op. Atty. Gen. 366 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4506, 1976 WL 23123

Office of the Attorney General

State of South Carolina

Opinion No. 4506

OCTOBER 28, 1976

*1 The Clerk of Court of Darlington County does not have the authority to issue marriage licenses.

TO: D. Kenneth Baker
County Attorney
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QUESTION PRESENTED:

Whether the Clerk of Court of Darlington County has the authority to issue marriage licenses, notwithstanding the passage of Act 690 of 1976?

AUTHORITIES:

Act 690 of 1976.

Section 20–22, Code of Laws of South Carolina, 1962, as amended.

Article V, Constitution of South Carolina.

State ex rel McLeod v. The Court of Probate of Colleton County, (South Carolina Supreme Court, opinion filed December 10, 1975; Supplemental opinion filed February 10, 1976), [223 S.E.2d 166](#).

DISCUSSION:

Article V of Act 690 of 1976 made certain revisions to the Probate Courts of this State. It was prompted as is the balance of the Act by the new Article V of the Constitution of South Carolina, ratified April 4, 1973.

Section 1 of the new Article V to the Constitution provides:

The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.

To this end the South Carolina Supreme Court has consistently invalidated all legislation brought before it for judicial review, that was passed subsequent to April 4, 1976, and found to be inconsistent with the concept of a unified and uniform court system. [Court Industries Corp v. Swirl, Inc](#), 264 S.C. 142, 213 S.E.2d 445 (1975); [State ex rel McLeod v. Knight](#), 264 S.C. 532, 216 S.E.2d 190 (1975); [State ex rel McLeod v. the Civil and Criminal Court of Horry County](#), 265, S.C. 114, 217 S.E.2d 23 (1975); [State ex rel McLeod v. The Court of Probate of Colleton County](#), *supra*.

Section 15, Article V of Act 690 of 1976 provides in part:

‘Every judge of probate in his county, shall have jurisdiction:

...

(c) to issue marriage licenses, in form as provided by the bureau of vital statistics of the Department of Health and Environmental Control; to record, index and dispose of copies of marriage certificates; and to issue certified copies of such licenses and certificates;

...'

Section 20–22, Code of Laws of South Carolina, 1962, as amended, provides that the Probate Judge in all counties is the issuing authority for marriage licenses, except that the Clerk of Court of Darlington County is the issuing authority for his county. Section 20–22 was last amended in 1975. Are these conflicting statutes reconcilable?

Although it is arguable that the issuance of marriage licenses is a ministerial and not judicial function, and, therefore, not subject to Article V of the Constitution, the fact that the office of the Clerk of Court is included within this Article deflates the argument. Article V, § 20 of the Constitution provides in part:

‘There shall be elected in each county by the electors thereof a clerk of the circuit court . . . The General Assembly shall provide by law for their duties and compensation . . .’

*2 The General Assembly has thus far not acted to bring the Clerk of Court into the unified and uniform judicial system. However, it would be inconsistent with Article V of the Constitution for the Clerk of Court of Darlington County to continue to issue marriage licenses, a duty which has been assigned to the Probate Judge as a part of the uniform judicial scheme.

SUMMARY:

It is the opinion of this office that so much of Section 20–22, Code of Laws of South Carolina, 1962, as amended, as vests in the Clerk of Court of Darlington County the authority to issue marriage licenses, has been repealed by implication, through the passage of Act 690 of 1976, effective June 30, 1976. However, it is further the opinion of this office that such licenses issued by the Clerk since that date are valid as de facto acts. See State ex rel McLeod v. Court of Probate of Collecton County, et al (Supplemental Opinion) supra.

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