

1974 S.C. Op. Atty. Gen. 123 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3754, 1974 WL 21269

Office of the Attorney General

State of South Carolina

Opinion No. 3754

April 18, 1974

\*1 The Honorable Tom DuBose  
Lee County Magistrate  
Box 221  
Bishopville, South Carolina 29010

Dear Judge DuBose:

In recent conversations with this office, you have stated that you intend to offer as a candidate for the office of county auditor. You have inquired as to the necessity of resigning as magistrate before commencing such a campaign.

In this regard, I would call to your attention the Code of Judicial Conduct, Rule 33, effective February 12, 1974. In particular, I think you should consider Canon 7A(3) which states in part:

A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office . . .'

It seems clear, based on the above that a judge may not hold office while campaigning for a non-judicial office. The central question is when does one become a candidate. While there may be disagreement on the exact point a candidacy commences, it seems to me that the only clearly discernable point is the time of filing. At this point, the intention to run is official and from that point on the person so filing is a candidate. To interpret Rule 33 otherwise would seem to add to unnecessary confusion and could quite possibly produce a violation of the spirit of the Rule.

It is therefore my opinion that should you decide to run for the office of county auditor, you should resign as magistrate as soon as you have filed, as a candidate for that office.

I hope that this information will prove helpful to you. If you have any further questions, please feel free to contact me.  
Very truly yours,

Hutson S. Davis, Jr.  
Assistant Attorney General

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