



HENRY McMASTER
ATTORNEY GENERAL

July 24, 2009

The Honorable Bart S. McGuire
Chief Magistrate, Greenwood County
528 Monument Street, Room 100
Greenwood, South Carolina 29646

Dear Magistrate McGuire:

In letters to this office you raised questions regarding the impact of a part-time magistrate who was suspended but has had the suspension lifted as to the status of the remaining magistrates in Greenwood County.

As to your first questions in which you asked whether if a suspended part time ministerial magistrate has had the suspension lifted, must the Chief Magistrate take hours and pay from other part time positions to "make room" for the return of the previously suspended part-time magistrate and whether the Chief Magistrate must assign hours to a part-time magistrate, consideration must first be given to whether the Supreme Court in lifting the suspension has made any provisions as to the questions posed. Of course, any determination by the Court as to the issues raised in your letter must be given priority and would control. The statutes are silent as to the responsibility of a chief magistrate to other magistrates in such regard but the Order of the Supreme Court appointing Chief Judges for Administrative Purposes of the Summary Courts states that the authority of the Chief Judge shall include the responsibility to

[c]ordinate the activities of the summary court judges of the county with other affected persons and/or agencies to insure cooperation and effective judicial service...

[d]esignate the hours of operation of each magistrate's court office in the county, and designate the hours during which each magistrate shall be present in the office, based upon the number of hours fixed for each magistrate by the county governing body....

I would note that the Order further states that "[n]o order issued by the Chief Judge under the authority of this Order shall be effective unless the order is filed with the Office of South Carolina

Court Administration and approved for consistency with statewide administrative policies.” Such statement is consistent with a prior opinion of this office dated February 20, 1992 which stated that “[a]ny questions regarding construction of the referenced Order as to activities in...(a)...county should be directed to the State Court Administration office.” Therefore, I can only suggest that you contact the State Court Administration office with regard to your question of “making room” for a previously suspended ministerial magistrate and the responsibility of assigning hours to that magistrate.

In a separate letter you indicated that there are three magistrates in Greenwood County classified as full-time and are scheduled for 37.5 hours per week. There is another 37.5 hour position which has been divided among the three full-time magistrates and two part-time magistrates. You stated that “[t]he County pays the full time magistrates their full time salary and also has the additional part-time salary entered on the same paycheck stub as ‘part time’ pay.” You have questioned whether “[s]hould an additional part-time magistrate be appointed within the County’s allotted number of magistrates to assume some of the others’ part time hours, may the County reduce the pay of those part-time magistrate judge positions?”

A prior opinion of this office dated June 13, 2003 is helpful in responding to your question. Such opinion states as follows:

S.C. Code Ann. § 22-1-10 provides that “[t]he Governor, by and with the advice and consent of the Senate, may appoint magistrates in each county of the State for a term of four years and until their successors are appointed and qualified.” That Section also provides that “... each county governing body must inform, in writing, the Senators representing that county of the number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned” Section 22-8-40 provides a mechanism for determining the minimum salary to be paid magistrates and the number of magistrates each county is to have. County governments are given a certain amount of leeway in these matters by Section 22-8-40 in that counties can determine whether their magisterial positions will be filled by full-time or part-time magistrates, the number of hours part-time magistrates are to work and the ability to pay magistrates more than the minimum established salary.

While Section 22-8-40 was substantially amended by Act No. 226 of 2000, the Magistrates Court Reform Act of 2000, certain provisions in the Section have been in existence since at least 1988 (See Act No. 678 of 1988). One such provision was originally codified as Section 22-8-40(I), but is now codified as Section 22-8-40(J). That subsection provides that:

A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office, and must be paid the same percentage annual increase in salary as other magistrates. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

...(Therefore)...it appears that a magistrate's salary may not be reduced during his tenure and his tenure continues even after his term ends if he is reappointed. This would seem to indicate that a magistrate's salary could never be reduced for the entire time that he is in office if he continues to receive consecutive reappointments.

Section 22-8-40(J) cannot, however, be read in a vacuum. After the initial passage of what is now known as Section 22-8-40(J), the General Assembly enacted Act No. 136 of 1991. That Act amended Section 22-1-10 and added, among other things, the following language:

Each magistrate's number of work hours, compensation, and work location must remain the same throughout the term of office, except for a change (1) specifically allowed by statute or (2) authorized by the county governing body at least four years after the magistrate's most recent appointment and after a material change in conditions has occurred which warrants the change. Nothing provided in this section prohibits the raising of compensation or hours and compensation during a term of office. No magistrate may be paid for work not performed except for bona fide illness or as otherwise provided by law.

Different statutes in *pari materia*, though enacted at different times, and not referring to each other must be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). If an irreconcilable conflict exists, the statute later in time will prevail as the later expression of legislative will. See: Feldman v. S. C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); See also Op. S.C. Atty. Gen., dated April 30, 1999.

As it is the later expression of legislative will, the above cited provision of Section 22-1-10(A) must be given effect. It should also, if possible, be reconciled with Section 22-8-40(J) so that the full intent of the General Assembly can be implemented. It appears that the statutes are capable of a logical reconciliation.

Section 22-8-40(J) should be interpreted as the general rule that a magistrate's salary must not be reduced during his tenure. Section 22-1-10(A) would then be interpreted as an exception to the general rule, but only in the event that certain conditions are met. In this case, the relevant conditions necessary prior to a reduction in hours or compensation would be that at least four years have passed since the magistrate's most recent appointment and there has been a material change in conditions. See Op. S.C. Atty. Gen., dated May 14, 1996...Accordingly, given the materiality requirement of Section 22-1-10(A) and the strong language Section 22-8-40(J), it is clear that a reduction in a magistrate's hours and compensation must be based on a substantial change, not mere pretext.

Additionally, prior opinions of this Office also provide support for the conclusion that Section 22-8-40(J) does not flatly prohibit a county from reducing the hours and compensation of magistrates based on the provisions of Section 22-1-10(A). In opinions dated April 29, 1991 and February 16, 1988, we concluded that pursuant to Section 22-8-40(D) (now § 22-8-40(F)) "... part-time magistrates are entitled to a proportionate percentage of the salary provided full-time magistrates ... (S)uch percentage is computed by dividing by forty the number of hours the part-time magistrate spends performing his duties ... [I]t appears that part-time magistrates' 'salaries' should be considered on an hourly wage basis and not as a fixed sum received regardless of the number of hours worked. ..." Based on this conclusion, we opined in the May 14, 1996 opinion referenced above that "... it appears that the compensation of a current part-time magistrate could be reduced in proportion to the reduction in the part-time magistrate's hours. [Accordingly] [t]here would not be a conflict with Section 22-8-40(I) [now § 22-8-40(J)] assuming that the salary on an hourly basis is not being reduced."

The opinion concluded by stating that

S.C. Code Ann.22-8-40(J) provides the general rule that a magistrate's salary is not to be reduced during his tenure in office. Section 22-1-10(A), however, provides an exception to this general rule and allows counties to reduce the hours and compensation of a magistrate upon the existence of certain conditions discussed above.

Such conclusion would be relevant to your question of whether should an additional part-time magistrate be appointed within the County's allotted number of magistrates to assume some of the other magistrates' part time hours, may the County reduce the pay of those part-time magisterial positions. Therefore, while generally, a magistrate's salary may not be reduced during his term of office, Section 22-1-10(A) provides an exception to such conclusion and authorizes the reduction

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of hours and compensation of a part-time magistrate consistent with a determination of the conditions provided by such provision.

With kind regards, I am,

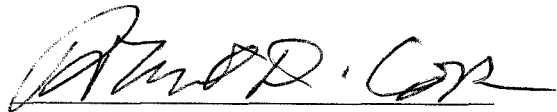
Very truly yours,

Henry McMaster
Attorney General

A handwritten signature in black ink, appearing to read "Charles H. Richardson". The signature is fluid and cursive, with a long horizontal stroke at the end.

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook". The signature is cursive and somewhat stylized, with a horizontal line underneath.

Robert D. Cook
Deputy Attorney General