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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 19, 2001

The Honorable James H. Merrill
Member, House of Representatives
174 Etiwan Park Street
Daniel Island, South Carolina

**Re: Your Letter of April 10, 2001
Perquisites for Part-time Magistrates**

Dear Representative Merrill:

In the above-referenced letter, you request that this Office "issue an advisory opinion about county Magistrate's qualifications for receiving State life and health benefits." From the attachments you included, it is apparent that the request relates specifically to part-time magistrates.

Generally, magistrates are considered county employees. See OP. ATTY. GEN. (Dated June 22, 1993). As such, should the county in which they serve choose to participate in the state health insurance plans, a magistrate would be eligible to receive the insurance coverage. See S.C. Code Ann. §1-11-720. Whether the county chooses to pay for the insurance coverage for its employees as a perquisite of their employment is largely left to the governing body of the county. See OP. ATTY. GEN. (Dated September 20, 1983) and S.C. Code Ann. §4-9-30(7).

Section 22-8-40(H) provides that "[m]agistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary." There is no language in the statute which would indicate that part-time magistrates are excluded from the provisions of §22-8-40(H). Accordingly, if a county chooses to reward with insurance coverage its part-time employees who have similar positions and salaries as the part-time magistrates, §22-8-40(H) would obligate the county to do the same for the part-time magistrates.

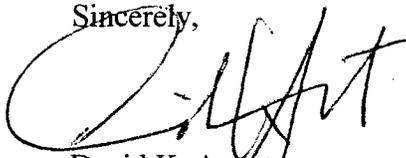
The question of whether a particular part-time magistrate in a particular county is entitled to insurance benefits as a perquisite of his position is a question of fact. This Office has no authority to and cannot resolve such questions. See OPS. ATTY. GEN. (Dated December 12, 1983 & February 3, 1997). Pursuant to §22-8-40(M), South Carolina Court Administration is to monitor compliance with the sections setting magistrates salaries and their entitlement to perquisites. I would suggest that any specific questions be addressed to that office. Further, if a particular magistrate is aggrieved by a ruling of a county, §22-8-50 provides that he or she "may petition the county governing body, in writing, for redress ... subject to judicial review as provided in Section 1-23-380."

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This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Avant", written over a large, stylized circular flourish.

David K. Avant
Assistant Attorney General

DKA/an