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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 18, 2001

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

**Re: Your Letter Received September 5, 2001
Employment Status of Magistrates/County Council Members**

Dear Representative Merrill:

On July 19, 2001, this Office provided an opinion for you concerning the ability of part-time magistrates to receive insurance benefits as a prerequisite of his/her position with the county. In follow-up to that opinion, you have asked for further clarification on this matter and requested an opinion on the following questions:

1. Are County Magistrates and Members of County Council both considered county employees?
2. Is there any recognized difference in status between County Magistrates and Members of County Council that is due to magistrates being appointed and Council Members being elected to their respective positions?
3. Are Members of County Council considered "part-time" employees by the state?

Unfortunately, your questions cannot be answered by simple yes or no responses. Any distinction in status, employment or otherwise, between a council member and magistrate depends in large part on the context of the review. As this Office has previously opined, "[t]he definitions of public official and state employee are many and may vary depending upon the purpose for which the terms are used." See OP. ATTY. GEN. (Dated September 28, 1992). As your requests relate to the clarification of a previous opinion concerning "magistrates and their ability to receive prerequisites comparable to local officials," they will be addressed in light of the applicable statutes regarding salary and compensation of these public positions.

Rembert C. Dennis

Magistrate/Council Members as County Employees

As a general matter, magistrates are considered county employees. See OP. ATTY. GEN. (Dated July 19, 2001); See also OP. ATTY. GEN. (Dated June 22, 1993) (various state statutes provide strong indication that magistrate should be considered county employee); and, See OP. ATTY. GEN. (Dated January 7, 1964) (magistrate is considered an employee of the county for social security purposes). For purposes of compensation, however, magistrates are treated differently from the general county employee.¹ The compensation a magistrate is to receive is governed by S.C. Code Ann. §22-8-40. As was discussed in the July 19, 2001, opinion, “magistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary” pursuant to §22-8-40(H). Pursuant to Section 4-9-30(7), county councils are authorized “to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people ...” Personnel classification and salary schedules are among those policies and procedures a county council is authorized to develop. See OP. ATTY. GEN. (Dated March 14, 1991). Accordingly, to determine what county employees are “of similar position and salary” as a magistrate, the employee classification and salary schedules set by county council would have to be reviewed.

As for members of county council, this Office has previously opined that, as the term is commonly used, county council members are not employees of the county. See OP. ATTY. GEN. (Dated February 17, 1999). That opinion went on to state that:

[a] member of county council is a “public officer” and is not an “employee” in the usual sense of the word however, in certain instances, the legislative body may choose to include public officers in a definition of “employee” found in a statute or ordinance [i]f such is the case, the public officer would be considered an “employee” for the limited purpose found in the legislation. 63C Am.Jur.2d Public Officers and employees §7 (1997).

For purposes of salary and compensation, I can find no statutory authority equating a county council member with the general county employee. In fact, elected officials, such as council members, are specifically excluded from the provisions of Section 4-9-30(7) which authorize the development of classification and salary schedules for county employees. Salaries and other forms of compensation for council members must be set as provided for in Section 4-9-100.

¹ Compensation includes perquisites, such as insurance benefits. See OP. ATTY. GEN. (Dated August 5, 1988).

Status of Council Members and Magistrates

As stated above, any distinction in the recognized status of magistrates and council members depends on the context of the review. The South Carolina General Assembly has provided various definitions of public officer and public employee which apply in various situations. For example, in the general provisions of Title 8 of the South Carolina Code, public officer is defined as "... all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law." This definition would seem to include both council members and magistrates. Similarly, Section 8-23-60 defines employee for purposes of the State's Deferred Compensation Program as "... any person whether appointed or elected providing services for the State or any political subdivision thereof for which compensation is paid on a regular basis." Again, this definition makes no distinction between those elected and those appointed.

On the other hand, Section 8-13-1300 defines public official as "... an elected or appointed official of the State, a county, a municipality or a political subdivision thereof, including candidates for the office ... [h]owever, 'public official' does not mean a member of the judiciary except for purposes of campaign financing ..." Clearly, elected council members are covered by this definition while appointed magistrates are not.

Further, as discussed above, in the context of salaries and other compensation, the Legislature has chosen to treat county council members and magistrates differently. The compensation for magistrates is governed by Section 22-8-40, with their entitlement to perquisites determined by a comparison to "those employees of the county of similar position and salary." Personnel classification and salary schedules for county employees are determined by county council pursuant to authority granted by Section 4-9-30(7). Council members are specifically excluded from Section 4-9-30(7) and their salary and compensation must be set in accordance with Section 4-9-100. Therefore, in terms of salary and compensation, there seems to be a "recognized difference between County Magistrates and Members of County Council."

County Council Members as Part-time State Employees

In their regulations related to "State Personnel Rules," the South Carolina Budget and Control Board defines State "Employee" as "any person in the employ of an agency who is paid a salary or wage." 23A S.C. Code Ann. Regs. 19-700(Z) (1976). The Budget and Control Board also defines "Agency" as "any department, institution, board, commission, council, division, bureau, center, school, hospital or other facility that is engaged in the business or affairs of State government ..." 23A S.C. Code Ann. Regs 19-700(A) (1976). This Office has previously opined that persons such as assistant solicitors and public defenders paid by the county would not be considered state employees under the Budget and Control Board's definition. Accordingly, it is my opinion that a county council member would not be considered a state employee.

The Honorable James H. Merrill
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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 horizontal line.

David K. Avant
Assistant Attorney General

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