

The State of South Carolina



Office of the Attorney General

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The Honorable William S. Branton, Jr.
Member, South Carolina Senate
125 Tasker Drive
Summerville, South Carolina 29483

Dear Senator Branton:

In a letter to this Office you questioned the authority of a county council to reduce the salary of a magistrate appointed to complete the unexpired term of a deceased magistrate.

Section 22-2-180 of the Code provides in part that:

(t)he magistrates of the several counties shall receive such compensation for performance of their duties as may be fixed by the governing body of the county, which shall not be diminished during their terms of office.... (Emphasis added).

A prior opinion of this Office dated February 4, 1977 dealt with the question of whether a county council was prohibited from decreasing the salary of an incumbent auditor who was serving an unexpired portion of a previous auditor's term. Specific reference was made in the opinion to a provision in the "home rule" act which states that the salary of an elected official may be increased but may not be reduced during the term for which he is elected. See: Section 4-9-30(7) of the Code. In concluding that the county in the situation addressed was prohibited from decreasing the particular auditor's salary, the opinion referenced the general rule which states:

... where a change in compensation during the term of an officer is prohibited, a

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change cannot affect one subsequently appointed to fill the vacancy of an existing term. 67 C.J.S. Officers Section 95 (1950).

While there is some authority to the contrary 1/, such remains the opinion of this Office.

As stated, the salary of a magistrate may not be reduced during his term of office. Consistent with the rule stated above regarding the compensation entitlement of one appointed to fill a vacancy, a county would similarly not be authorized to reduce the salary of a magistrate appointed to complete the unexpired term of a deceased magistrate.

If there are any questions, please advise.

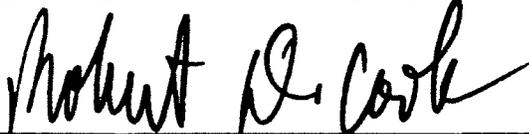
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

1/ One court has held that a constitutional prohibition against increasing or reducing the salary of an officer during his term did not preclude an individual, appointed to fill an unexpired term from taking an increased salary which became effective after the term began but before the appointment was made. Lancaster v. Board of Commissioners of Jefferson County, 171 P.2d 987 (Col. 1946). See also: 67 C.J.S. Officers Section 230 (1978).