

1981 WL 158261 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 7, 1981

*1 The Honorable Isaac C. Joe
Member
House of Representatives
320 D Blatt Building
Columbia, SC 29211

Dear Representative Joe:

In our recent conversation you indicated that some consideration is being given to reducing the number of magistrates in Lee County. Referencing such, you asked for an opinion as to who has the authority to provide for the number of magistrates in each county and how magisterial districts are determined. You also questioned whether there are any requirements that magisterial districts conform in population.

While it has been the practice of the General Assembly to establish a certain number of magisterial districts in various counties, there are no absolute requirements that magistrates be appointed to represent specific districts within a particular county. However, it is clear that the General Assembly is authorized to establish the number of magisterial offices within a particular county. [Article V, Section 23 of the South Carolina Constitution](#) provides that the Governor, with the consent of the Senate, ' . . . shall appoint a number of magistrates for each county as provided by law' An earlier opinion of this Office dated September 9, 1969, referenced that in enacting the provision now codified as [Section 22-1-10, Code of Laws of South Carolina, 1916](#), the General Assembly construed the Constitution of 1895 as requiring the General Assembly to provide for the number of magistrates to be appointed in the various counties and that this practice has been followed to the present time. Also, the South Carolina Supreme Court in the cases of [Young v. Sapp, 167 S.C. 364, 166 S.E. 354 \(1932\)](#) and [Gaffney v. Mallory, 186 S.C. 237, 195 S.E. 840 \(1937\)](#), has recognized the right of the General Assembly to create or abolish specific magisterial offices in each county. Furthermore, included in a 1979 Act was the provision now codified as [Section 22-240\(A\), Code of Laws, of South Carolina, 1976, as amended](#), which states that

The General Assembly shall provide for the number and location of magistrates in each county. The provisions of this chapter shall not be construed to prevent more than one magistrate from being assigned to the same jury area.

While the above references the authority of the General Assembly to provide for the number of magistrates to be appointed in the various counties, again, there is no absolute requirement that magisterial districts be established in each county. The General Assembly, however, did provide in a provision now codified as [Section 22-2-20, Code of Laws of South Carolina, 1976, as amended](#), that

the General Assembly shall establish jury areas from which juries shall be drawn to serve in the courts of various magistrates within the counties of this State.

In instructing how such jury areas were to be initially determined, the General Assembly provided that . . . every effort should be made to conform such jury areas to existing magisterial districts or if no districts exist, then such boundaries shall include the area in the vicinity of each magistrate's court within the county.

*2 of course, there is nothing which prohibits the establishment of magisterial districts for a particular county by the General Assembly. If such districts are established, there are no requirements that such districts conform in population.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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