

1979 WL 42948 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1979

***1** Chief J.P. Strom
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, South Carolina 29221

Dear Chief Strom:

In a conversation with Mr. McLeod, you asked for an opinion as to what constitutes a 'full-time magistrate's constable' as referenced in Section 2 of Act No. 667 of 1976 now codified as [Section 22-9-190 of the 1976 Code](#) of Law, as amended. Such section states:

notwithstanding any other provision of law, all full-time magistrates' constables shall attend the South Carolina Criminal Justice Training Academy within one year from June 29, 1976, or within one year from initial date of employment after June 29, 1976.

The Act does not define what constitutes a full-time magistrate's constable. Furthermore, such a definition is not provided in any other pertinent sections of the Code of Laws. Presumably, in making any determination as to status, reference must be made to the actual amount of time spent performing the duties of the office by a magistrate's constable. It appears that a 'full-time magistrate's constable' could be defined as one who devotes the majority of his workday to the duties of being a magistrate's constable.

The circumstances in each case obviously vary and therefore each situation must be judged in accordance with the facts in each case. Therefore in deciding whether a particular magistrate's constable comes within the definition of a full-time magistrate's constable, a determination must be made as to whether the majority of a particular magistrate's constable workday is occupied doing the work of a magistrate's constable.

Additionally, please be advised that it appears that the requirement that full-time magistrates' constables attend the Criminal Justice Academy is directory only and not mandatory. A previous opinion of this office, an opinion from Mr. J.C. Coleman to Neal Forney, dated July 12, 1976, referenced the section of the Code now codified as [Section 23-23-40 of the 1976 Code](#) of Laws, as amended, which requires that certain law enforcement officers obtain training at the Academy and provides that if they do not do so, their authority as law enforcement officers is terminated. However, the Section above referenced pertaining to magistrates' constables contains no such provision. The opinion noted that it appeared therefore that the section requiring magistrates' constables attend the Criminal Justice Academy is directory only and such constables would not be disqualified from performing the duties of their office if they failed to obtain the required training.

Please be advised additionally that a portion of the Act now codified as [Section 22-9-180 of the 1976 Code](#) of Laws states: (n)otwithstanding any other provisions of law, magistrates' constables who have received the required training by the South Carolina Law Enforcement Division as set forth in [Sections 22-9-180 to 22-9-210](#), shall be authorized to carry pistols on and about their persons when on official duty as such constables and when going to and from their places of residence. . . .

***2** It appears, therefore, that one of the prime intentions of the Act was to authorize magistrates' constables to carry pistols. This office had formerly held that there was no exception as to magistrates' constables in the pistol laws of this state, inasmuch as such individuals were not listed among those individuals specifically exempted by virtue of their office from the provision

in Section 16-23-20 in the 1976 Code of Laws, making it illegal to carry about the person, whether concealed or not, a pistol. (1971 Op. Att'y Gen., No. 3138, p. 90), However, instead of specifically authorizing magistrates' constables per se to carry pistols, the referenced Act was passed which required that in order to be able to carry a pistol, magistrates' constables had to receive the training at the Criminal Justice Academy required of 'all full-time magistrates' constables.'

Hopefully the above is in full response to your inquiry. If there is anything further, please do not hesitate to contact this office.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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