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ATTORNEY GENERAL

May 9, 2023

The Honorable Michael W. Gambrell
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South Carolina Senate
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The Honorable Billy Garrett
Member
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504 Gressette Bldg.
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Dear Senators Gambrell and Garrett:

We received your letter requesting an opinion as to the authority of Greenwood County Council in regard to magistrates' salaries. Specifically, you ask whether it has the following authority:

- (1) to unilaterally impose a limit on the funding it intends to provide for magistrates salaries;
- (2) to allow magistrates' salaries to be dependent upon the number of cases a magistrate concludes; and
- (3) to decrease substantially the number of hours necessary to perform the responsibilities of magistrate's court.

Law/Analysis

As you pointed out in your letter, this Office issued an opinion in 1991 stating the General Assembly has responsibility for setting a schedule of salaries for magistrates. Op. Att'y Gen., 1991 WL 474756 (S.C.A.G. Apr. 11, 1991) (citing State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1979)). Quoting Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850 (1981), we stated: "It is certainly competent for the General Assembly to mandate county funding of county agencies . . . Likewise the General Assembly has the authority to direct counties to support with county funds the courts of the unified system." Id. Accordingly, magistrates' compensation is governed by chapter 8 of title 22 of the South Carolina Code, otherwise known as the Magistrate's Pay Act. Section 22-8-40 of the South Carolina Code (2007) not only governs how many magistrates a county must have, but also governs how much magistrates are paid. This provision states in relevant part:

(B) Each magistrate in this State must be paid as follows by the county which he serves:

(1) The following salary schedule shall be used to determine a magistrate's annual compensation prior to the completion of his fourth year in office:

(a) upon being appointed a magistrate, a magistrate shall be paid seventy-five percent of the base salary for his county's population category as provided in item (2);

(b) upon completing the requirements of Sections 22-1-10(C) and 22-1-16, a magistrate shall be paid eighty percent of the base salary for his county's population category as provided in item (2);

(c) upon the magistrate's completion of his second year in office, a magistrate shall be paid eighty-five percent of the lowest salary rate for his county's population category as provided in item (2);

(d) upon the magistrate's completion of his third year in office, a magistrate shall be paid ninety percent of the lowest salary rate for his county's population category as provided in item (2);

(e) upon the magistrate's completion of his fourth year in office, a magistrate shall be paid one hundred percent of the lowest salary rate for his county's population category as provided in item (2).

(2) There is established a base salary for each population category as follows:

(a) for those counties with a population of one hundred fifty thousand and above, according to the latest official United States Decennial Census, the base salary is fifty-five percent of a circuit judge's salary for the state's previous fiscal year;

(b) for those counties with a population of at least fifty thousand but not more than one hundred forty-nine thousand, nine hundred ninety-nine, according to the latest official United States Decennial Census, the base salary is forty-five percent of a circuit judge's salary for the state's previous fiscal year;

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(c) for those counties with a population of less than fifty thousand, according to the latest official United States Decennial Census, the base salary is thirty-five percent of a circuit court judge's salary for the state's previous fiscal year.

(3) The provisions of this subsection are effective July 1, 2000.

S.C. Code Ann. § 22-8-40(B) (emphasis added). Subsection (K) of this provision states: "No county may pay a magistrate a salary lower than the base salary established for that county by the provisions of subsection (B) of this section." S.C. Code Ann. § 22-8-40(K). Thus, counties must follow the guidelines set forth in section 22-8-40(B) in determining magistrates' salaries and allocate the funding required to meet those obligations. See Davis v. Cnty. of Greenville, 322 S.C. 73, 78, 470 S.E.2d 94, 96–97 (1996) (finding section 22-8-40(B) mandates funding of magistrates' salaries based on application of the formulas therein).

You also inquire as to whether a magistrate's pay can be dependent upon the number of cases the magistrate concludes. Section 22-8-40(B) bases magistrates' pay on a circuit judge's salary taking into account the population of the county and the magistrates' years of service. Section 22-8-40(B) does not allow for magistrates' pay to depend on the number of cases they conclude. In fact, section 22-8-40 indicates part-time magistrates' pay is determined by the time they spend performing their official duties, not by how many cases they conclude.

Part-time magistrates are entitled to a proportionate percentage of the salary provided for full-time magistrates. This percentage is computed by dividing by forty the number of hours a week the part-time magistrate spends in the performance of his duties. The number of hours a week that a part-time magistrate spends in the exercise of the judicial function, and scheduled to be spent on call, must be the average number of hours worked and is fixed by the county governing body upon the recommendation of the chief magistrate. However, a part-time magistrate must not work more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.

S.C. Code Ann. § 22-8-40(F). Therefore, it is our opinion that magistrates' pay cannot be based on the number of cases they conclude.

Lastly, you ask us about a county's ability to decrease the number of hours necessary to perform a magistrate's duties. Section 22-8-10 of the South Carolina Code (2007) defines a "full-time magistrate" as "a magistrate who regularly works forty hours a week performing official duties required of a magistrate as a judicial officer." As such, a magistrate classified as "full-time" must work forty hours a week. A "part-time magistrate" as defined in section 22-8-10 is "a magistrate who regularly works less than forty hours a week performing official duties required of a

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magistrate as a judicial officer.” Section 22-8-40(F) gives the county governing body, upon recommendation of the chief magistrate, the authority to fix the number of hours a part-time magistrate spends performing his or her duties. Therefore, it is up to the county governing body to decide the number of hours a part-time magistrate should work. However, section 22-1-10 of the South Carolina Code (Supp. 2022) requires the county governing body to notify the Senate delegation of the number of hours each magistrate is required to work prior to the start of their terms. Section 22-1-10(A) states that every four years

each county governing body must inform, in writing, the Senators representing that county of the number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned. If the county governing body fails to inform, in writing, the Senators representing that county of the information as required in this section, then the compensation, hours, and location of the full-time and part-time magistrate positions available in the county remain as designated for the previous four years.

(emphasis added). However, this provision also states: “Each magistrate’s number of work hours, compensation, and work location must remain the same throughout the term of office, except for a change (1) specifically allowed by statute or (2) authorized by the county governing body at least four years after the magistrate’s most recent appointment and after a material change in conditions has occurred which warrants the change.” S.C. Code Ann. § 22-1-10(A). Section 22-2-40(C) also permits changes in the number and status of magistrates as full and part time by an agreement between the county’s governing body and the Senate delegation. However, even then “a magistrate’s compensation must not be decreased during his term in office.” S.C. Code Ann. § 22-2-40(C).

In a 2003 opinion, this Office considered a county’s ability to reduce the hours and compensation of magistrates. Op. Att’y Gen., 2003 WL 21471507 (S.C.A.G. June 13, 2003). We cited section 22-8-40(J) of the South Carolina Code, which like sections 22-1-10 and 22-2-40 also prohibits a decrease in salary during the magistrate’s tenure.

A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office, and must be paid the same percentage annual increase in salary as other magistrates. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

S.C. Code Ann. § 22-8-40(J). Analyzing section 22-8-40(J) with section 22-1-10, we concluded:

Section 22-8-40(J) should be interpreted as the general rule that a magistrate's salary must not be reduced during his tenure. Section 22-1-10(A) would then be interpreted as an exception to the general rule, but only in the event that certain conditions are met. In this case, the relevant conditions necessary prior to a reduction in hours or compensation would be that at least four years have passed since the magistrate's most recent appointment and there has been a material change in conditions. See Op. S.C. Atty. Gen., dated May 14, 1996. While this Office is not in a position to determine what is or is not a material change in conditions, it should be noted that "material," in this context, generally means "[b]eing both relevant and consequential; crucial." See The American Heritage College Dictionary, Third Edition. Accordingly, given the materiality requirement of Section 22-1-10(A) and the strong language Section 22-8-40(J), it is clear that a reduction in a magistrate's hours and compensation must be based on a substantial change, not mere pretext.

Additionally, prior opinions of this Office also provide support for the conclusion that Section 22-8-40(J) does not flatly prohibit a county from reducing the hours and compensation of magistrates based on the provisions of Section 22-1-10(A). In opinions dated April 29, 1991 and February 16, 1988, we concluded that pursuant to Section 22-8-40(D) (now § 22-8-40(F)) "... part-time magistrates are entitled to a proportionate percentage of the salary provided full-time magistrates ... (S)uch percentage is computed by dividing by forty the number of hours the part-time magistrate spends performing his duties ... [I]t appears that part-time magistrates' 'salaries' should be considered on an hourly wage basis and not as a fixed sum received regardless of the number of hours worked. ..." Based on this conclusion, we opined in the May 14, 1996 opinion referenced above that "... it appears that the compensation of a current part-time magistrate could be reduced in proportion to the reduction in the part-time magistrate's hours. [Accordingly] [t]here would not be a conflict with Section 22-8-40(I) [now § 22-8-40(J)] assuming that the salary on an hourly basis is not being reduced."

Op. Att'y Gen., 2003 WL 21471507 (S.C.A.G. June 13, 2003). Therefore, while a county governing body may have authority to change the hours worked by a part-time magistrate, it must communicate the change to the Senate delegation prior to the start of the magistrate's term. Furthermore, the county governing body cannot change the number of hours worked or the compensation paid during the magistrate's term unless one of the two requirements in section 22-1-10(A) is satisfied.

Conclusion

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Our Supreme Court in Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850 (1981), made clear the General Assembly has authority to mandate county funding of courts of the unified system. The General Assembly specified in the Magistrate's Pay Act found in chapter 8 of title 22 of the South Carolina Code how magistrates are to be paid. Section 22-8-40 of the South Carolina Code calculates magistrates' pay, which is a percentage of a circuit court judge's salary and is based on the population of the county the magistrate serves and his or her years of service. Under section 22-8-40(K), the General Assembly prohibits counties from paying magistrates a salary lower than that computed under section 22-8-40(B). In accordance with our 1991 opinion, counties may not refuse to pay magisterial salaries. Op. Att'y Gen., 1991 WL 474756 (S.C.A.G. Apr. 11, 1991). As such, counties must fund magistrates' salaries sufficient to meet the requirements of section 22-8-40. If a county fails to fund magistrates' salaries as is required by the Magistrate's Pay Act, such a failure could result in action by the General Assembly or possibly a court.

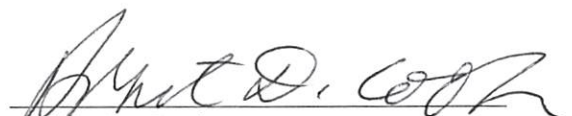
Regarding the basis of magistrates' pay, section 22-8-40 requires part-time magistrates be paid a percentage of the salary paid to full-time magistrates based on the time spent performing their duties, not based upon the number of cases the magistrate concludes. S.C. Code Ann. § 22-8-40(F). Section 22-8-40(F) gives county governing bodies the authority to set the number of hours part-time magistrates work based on a recommendation from the chief magistrate. However, section 22-1-10 requires the county governing body to notify their Senate delegation of each magistrate's work hours prior to the commencement of his or her term. Moreover, section 22-1-10(A) mandates the magistrate's work hours and compensation remain the same during their term barring a statute authorizing a change or circumstances warranting a change and then only after at least four years from the magistrate's most recent term.

Sincerely,



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REVIEWED AND APPROVED BY:



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