



ALAN WILSON  
ATTORNEY GENERAL

November 1, 2021

The Honorable Jimmy W. Gantt, Jr.  
Magistrate  
Barnwell County  
260 Meadow Lane  
Barnwell, South Carolina 29812

Dear Judge Gantt:

We received your letter requesting an opinion of this Office concerning magistrates' salaries in light of two provisos included in the most recent appropriations act passed by the General Assembly. You ask the following questions:

1. Do budget provisos enacted by the General Assembly extend beyond the appropriation of state resources?
2. Which is controlling, a permanent statute or a conflicting budget proviso that does not in any way appropriate State resources?

More specifically in relation to magistrates' pay, you ask "would a county in expending its own resources follow the requirements of permanent statute § 22-8-40 or proviso 117.[139]? Does the proviso apply to the State's use of resources and the permanent statute apply to the county's obligation to fund magistrate salaries?"

#### Law/Analysis

As you pointed out in your letter, section 22-8-40 of the South Carolina Code (2007) governs magistrates' compensation. Pursuant to this provision, a magistrate's salary is based on a percentage of a circuit court judge's salary taking into account the years of service of a particular magistrate and the population of the county they serve.

(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;

(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.

As you indicated in your letter, the provisos included in the 2021-2022 appropriations act includes proviso 117.169, governing employee compensation, which states in pertinent part: “(6) Effective on the first pay date that occurs on or after July first of the current fiscal year, the Chief Justice and other judicial officers shall receive an annualized base pay increase of two and one half percent.” 2021 S.C. Act 94. Accordingly, this provision increased the pay for circuit court judges by two and one half percent.

In an opinion issued by this Office in 2007, we were asked whether a four percent cost of living increase for the Chief Justice and other judicial officers included in an appropriations act results in a four percent increase in magistrate pay. Op. Att’y Gen., 2007 WL 1031441 (S.C.A.G. March 2, 2007). We concluded:

[E]ffective July 1, 2005, a circuit court judge’s salary was increased 4%. As a result of the provision in amended Section 22-8-40(B)(2) that a magistrate make a percentage of a circuit judge’s salary for the previous fiscal year, it appears that effective July 1, 2006, a magistrate would have also received a pay increase equal to 4%.

Id. Furthermore, even though the particular magistrate in that opinion received more than the base salary required by section 22-8-40, we determined the pay increase applied stating:

[A] magistrate receiving a salary greater than provided for his position pursuant to Section 22-8-40 “must be paid the same percentage annual increase in salary as other magistrates.” Consistent with such, in the opinion of this office, that magistrate would also receive the same increase paid to other magistrates, i.e., the pay increase tied to a circuit judge’s salary. Of course, as further stated in Section 22-8-40, nothing prohibits a county from paying a magistrate more than the salary established for that county or from paying a magistrate a merit raise in addition to the salary established for that county.

Id.

Based on this opinion, an appropriations act proviso increasing the salary of a circuit court judge would similarly increase the salary of a magistrate as section 22-8-40 bases magistrate’s pay on that of a circuit court judge. However, as you discovered, the 2021-2022 appropriations act also includes proviso 117.139: “Notwithstanding Proviso 117.169 (Employee Compensation), in the current fiscal year, the salary for each magistrate must be calculated using the same schedule and same circuit judge salary, at a minimum, as was in effect in Fiscal Year 2018-19.” 2021 S.C. Act 94. Proviso 117.139, therefore, excludes magistrates from the pay increase afforded to judicial

officers pursuant to proviso 117.169 and leads us to your initial two questions of whether the General Assembly can enact such a proviso and whether it conflicts with section 22-8-40.

First, you question whether proviso 117.139 extends beyond state appropriations. You state: “In the current fiscal year, and historically, a magistrate’s salary is entirely funded by the county in which he is appointed. No State resources are expended or appropriated in funding a magistrate’s salary.” By this, we presume you are questioning whether the proviso may violate the one-subject rule set forth in section 17 of article III of the South Carolina Constitution (2009), which states: “Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.” S.C. Const. art. III, § 17. “The purpose of Article III, § 17 is to prevent the General Assembly from being misled into passing bills containing provisions not indicated in their titles, and to apprise the people of the subject of proposed legislation and thus give them an opportunity to be heard if they so desire.” Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 102 (1996). In regard to appropriations acts, our Supreme Court explained: “A measure enacted as part of a general appropriations act does not violate article III, § 17, if it reasonably and inherently relates to the raising and spending of tax monies.” Town of Hilton Head Island v. Morris, 324 S.C. 30, 35, 484 S.E.2d 104, 107 (1997).

Before considering whether provisos 117.169 and 117.139 violate the one-subject rule, we note just as we did in a 2015 opinion also considering the constitutionality of a legislative act under section 17 of article III,

our opinion herein does not speak to the wisdom or policy of the proposed legislation but only to the constitutionality. Policy questions are for the General Assembly to determine. Likewise, we do not comment upon the rules of procedure of either the Senate or the House of Representatives as application of such rules are left to each body. See Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940).

Op. Att’y Gen., 2015 WL 499091 (S.C.A.G. Jan. 29, 2015). In this case, the General Assembly found these provisos do not violate the one-subject rule, and we generally defer to the General Assembly’s determination in this regard.

Additionally, we must keep in mind,

[i]t is well recognized that “[e]very legislative act must be presumed constitutional and should be declared unconstitutional only when its invalidity is manifest beyond a reasonable doubt . . . ‘[T]he Constitution of the State is a restraint of power, and the Legislature may enact any law not prohibited thereby.’” Nichols v. South Carolina Research Authority, 290 S.C. 415, 424, 351 S.E.2d 155, 160 (1986). In addition, we have consistently advised that a statute “must continue to be enforced unless set aside by a court or repealed by the General Assembly.” Op. S.C. Att’y Gen., 2017 WL 4464415 (September

26, 2017). “This office, in its Opinion, may only comment upon potential constitutional issues which we see as possibly arising in a judicial proceeding.”  
Id.

Op. Att’y Gen., 2020 WL 3619620 (S.C.A.G. June 25, 2020).

With this presumption in mind, we consider the provisos in question. Proviso 117.169 most certainly pertains to the raising and spending of tax monies. This provision sets forth the mechanism by which the funds appropriated for state employee pay increases are to be allocated. Proviso 117.139 presents a more difficult question as it does not seek to allocate such funds. Based on our 2007 opinion, which presumably the General Assembly was aware of in passing the 2021-2022 appropriations act, an increase in circuit court judges’ salaries results in an equivalent increase in magistrates’ salaries due to section 22-8-40. See Op. Att’y Gen., 2006 WL 1207282 (S.C.A.G. Apr. 26, 2006) (stating “it is well established that the General Assembly is presumptively aware of opinions of the Attorney General and, absent changes in the law following the issuance thereof, the legislature is deemed to have acquiesced in the Attorney General’s interpretation.”). Proviso 117.139 specifies salary increases established in proviso 117.169 do not increase magistrates’ salaries, which are based on the salary established in fiscal year 2018-2019. Thus, we believe the General Assembly included proviso 117.139 to prevent the salary increase for judicial officers under proviso 117.169 from applying to magistrates in accordance with our 2007 opinion. The question now becomes whether this proviso “reasonably and inherently relates to the raising and spending of tax monies?” Town of Hilton Head Island, 324 S.C. at 35, 484 S.E.2d at 107.

As you point out, magistrates’ salaries are funded by their respective counties, not through state appropriations. Accordingly, proviso 117.139 does not directly impact state funds because whether or not a magistrate receives an increase in salary only impacts county funds. However, as our Supreme Court in South Carolina Public Interest Foundation v. Lucas, 416 S.C. 269, 276, 786 S.E.2d 124, 129 (2016) (citing Hercules Inc. v. S.C. Tax Comm’n, 274 S.C. 137, 139, 262 S.E.2d 45, 47 (1980)), noted, under section 17 of article III of the South Carolina Constitution, the proviso is not required to be directly related to the spending of revenue, but must simply be “reasonably and inherently” related to this purpose. Having included proviso 117.169, the General Assembly likely knew it would collaterally effect counties. Therefore, the General Assembly may have sought to avoid mandating counties increase magistrates’ salaries, which itself could be viewed as outside of the purpose of the appropriations act. Thus, in an effort to construe proviso 117.139 as constitutional, a court could find that while not directly related to the spending of state revenue, this proviso is reasonably and inherently related to limiting the purpose of the appropriations act to the allocation of state funds. Nonetheless, we caution that making the determination of what is and is not reasonably and inherently related to the purposes of the 2021-2022 appropriations act involves the determination of fact, which as we stated on numerous occasions is beyond the scope of an opinion of this Office. Op. Att’y Gen., 2010 WL 928445 (S.C.A.G. Feb. 18, 2010) (“This office has repeatedly stated that an opinion of this office cannot determine facts noting that the determination of facts is beyond the scope of an opinion of this

office.”). In addition, “this Office has no authority to declare an act of the General Assembly invalid or unconstitutional; only a court would have such authority.” Op. Att’y Gen., 1991 WL 633020 (S.C.A.G. May 24, 1991). As such, we suggest you seek clarification from a court as to whether this particular proviso violates section 17 of article III of the South Carolina Constitution.

You also ask about whether a permanent statute or a budget proviso is controlling. Generally, if an irreconcilable conflict arises between a permanent statute and an appropriations act, the result is a temporary suspension of the permanent statute. Amisub of S.C., Inc. v. S.C. Dep’t of Health & Env’t Control, 407 S.C. 583, 598, 757 S.E.2d 408, 416 (2014); Beaufort Cty. v. S.C. State Election Comm’n, 395 S.C. 366, 374, 718 S.E.2d 432, 436 (2011). Accordingly, for section 22-8-40 to be temporarily suspended, we must find a direct conflict between it and proviso 117.139.

According to section 22-8-40 of the South Carolina Code, the minimum salaries paid to magistrates is based on the salary of a circuit court judge. Proviso 117.169 increases the salary for a circuit court judge by two and one half percent. As we discussed above, by applying section 22-8-40 to this proviso, a magistrate’s salary would also increase by two and one half percent. Proviso 117.39 effectively negates proviso 117.69 as applied to magistrates. However, we are not convinced there is a direct conflict between section 22-8-40 and proviso 117.39. Proviso 117.139 does not prevent the application of section 22-8-40, it only prevents the application of proviso 117.69 giving judicial officers a two and a half percent salary increase. Nonetheless, should a court determine a direct conflict exists, the result would be the suspension of section 22-8-40, not the invalidation of proviso 117.139. In which case, the proviso would control, but only for the 2021-2022 fiscal year.

### Conclusion

Section 17 of article III of the South Carolina Constitution requires every legislative act be related to only one subject. On many occasions, our Supreme Court considered this requirement in relation to annual appropriations and concluded the test to be applied to appropriations acts is “whether the challenged legislation was reasonably and inherently related to the raising and expenditure of tax monies.” Maner v. Maner, 278 S.C. 377, 382, 296 S.E.2d 533, 536 (1982). Thus, you are correct that budget provisos cannot extend beyond the appropriation of state resources if they are not reasonably and inherently related to the raising and expenditure of tax monies.

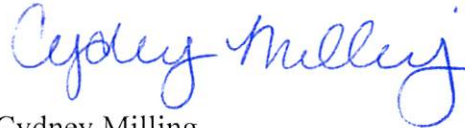
In looking at provisos 117.69 and 117.39 in particular, we must begin our analysis with the presumption that all legislative enactments are constitutional and will be construed so as to render them valid. Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, S.C.23, 736 S.E.2d 651, 655 (2012). Proviso 117.169 clearly relates to the expenditure of tax monies as it sets forth the allocation of appropriated funds for state employee raises. However, proviso 117.139, which appears not to involve the direct appropriation of states funds, presents a more difficult question. Nonetheless, because magistrates’ salaries are funded by the counties they serve, the inclusion of this proviso inhibits the appropriation of county funds in a state appropriations act. Therefore, we believe a court could find proviso 117.139, while not directly related to the spending of state revenue, is

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reasonably and inherently related to limiting the purpose of the appropriations act to the spending of state funds rather than mandating the expenditure of counties funds. However, the determination of whether proviso 117.139 satisfies one-subject rule is a factual determination, which can only conclusively be made by a court. See Op. Att'y Gen., 2010 WL 928444 (S.C.A.G. Feb. 24, 2010).

Furthermore, we do not believe proviso 117.139 is in direct conflict with section 22-8-40, as counties may still comply with section 22-8-40. However, should a court find otherwise, a conflict results in the temporary suspension of the permanent statute in favor of the appropriations act.

Sincerely,



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REVIEWED AND APPROVED BY:



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