

The State of South Carolina

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Office of the Attorney General

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March 6, 1990

The Honorable Hugh K. Leatherman, Sr.  
Senator, District No. 31  
513 Gressette Senate Office Building  
Columbia, South Carolina 29202

Dear Senator Leatherman:

In a letter to this Office you requested an interpretation of Section 22-8-40(B) of the Code, a provision in Act No. 678 of 1988, which states in part:

(t)he maximum number of magistrates in each county is the greater of that number determined by taking one magistrate for every twenty-eight thousand persons in each county or that number determined by taking the average of the ratio of one magistrate for every twenty-eight thousand persons in each county as provided by item (2) of this section and the ratio of one magistrate for every one hundred fifty square miles of area in each county as provided in item (3) of this section. However, no county is required to have fewer than the equivalent of one full-time magistrate and one part-time magistrate. If a fraction of the magistrate results, the county must round off the fraction, establish an additional part-time magistrate. No additional magistrates may be added until a county has less than the ratio.

You stated that this provision has been interpreted as mandating that a magistrate must physically be in an area consisting of 150 square miles or containing 28,000 people. You questioned whether this is a correct interpretation or is the provision to be used in determining the number of magistrates in a county.

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In the opinion of this Office, the referenced provision of Section 22-8-40 sets forth the manner of determining the number of magistrates in a county and does not provide for the location of any particular magistrate. Frequently special legislation for particular counties did provide for certain numbers of magistrates to be located in specified areas. See, e.g., Act. No. 25 of 1973 as to Florence County Magistrates. This Office in an opinion issued this same date indicated that such special legislation was probably superseded or impliedly repealed by Act No. 678. This would especially be the conclusion for those counties where the number of magistrates is reduced by the ratio formula set forth in Section 22-8-40 from the number provided by special legislation. Of course, we recommended that legislation be considered which would specifically clarify any ambiguities in such regard. Also, consideration may be given to amending provisions for jury areas. See: Section 22-2-190 of the Code. Such amendment may be necessary because of the provisions of Section 22-2-170 of the Code which states in part "(c)riminal cases shall be tried in the Jury Area where the offense was committed... ." Therefore, if the number of jury areas presently provided for a specific county is inconsistent with the number of magistrates authorized by the ratio set forth in Section 22-8-40, legislative clarification would be advantageous.

If there is anything further, please advise.

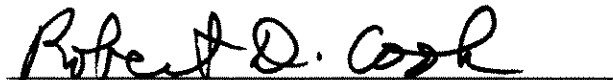
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:



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