



HENRY McMASTER  
ATTORNEY GENERAL

September 8, 2006

The Honorable Clevette L. Hudnell  
Columbia Magistrate  
Post Office Box 192  
Columbia, South Carolina 29201

Dear Judge Hudnell:

In a letter to this office you questioned the Richland County pay plan for magistrates that was adopted by the County effective July 1, 1998. By that plan:

As of July 1, 1998, a full-time magistrate with a two year associate degree or four years Bachelors degree and having obtained four (4) years judicial experience or having a total of twelve (12) years judicial experience as an equivalent shall be paid at a salary rate of sixty percent (60%) of that of a Circuit Court Judge's salary of this state. A newly appointed magistrate would progress to the full time rate as follows:

1.1 A newly appointed magistrate with a four (4) year Bachelor degree should be paid according to the "A" scale below. The term "newly appointed" for scale "A" means a person with a Bachelor degree never before serving as a magistrate for his/her first four year term or the remainder of an unexpired term of a former magistrate. A newly appointed magistrate does not have the requisite experience.

1.2 A newly appointed magistrate without a four (4) year Bachelor degree shall be paid according to the "B" scale below. The term "newly appointed" for the purposes of "B" scale means a person who meets the state minimum requirement and does not have a bachelor degree and does not have the requisite experience. (emphasis added).

"Scale A" establishes a pay scale that ranges from 42% of a circuit judge's salary upon first being appointed to 60% of a circuit judge's salary upon completion of four years experience. "Scale B" establishes a pay scale that states that upon initial appointment the magistrate shall be paid at the state base rate and then increase to a point that upon the twelfth anniversary of appointment, the magistrate shall be paid at a rate of 60% of a circuit judge's salary.

*Request Letter*

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In our telephone conversation you indicated that you were appointed as a magistrate in 1999 and that you have a two year degree. You stated that you are presently being paid at a rate of 55% of a circuit judge's salary. You also indicated that another Richland County magistrate with a two year degree is being paid at the rate of 60% of a circuit judge's salary. I have been informed that the latter individual had been appointed as a magistrate prior to the effective date of the referenced Richland County pay plan. That magistrate's pay of 60% of a circuit judge's salary would be appropriate inasmuch as the pay plan referenced above specifically states that a full-time magistrate in office on the effective date of the plan with a two year associate degree and with the required years of judicial experience shall be paid at a salary rate of 60% of a circuit judge's salary.

S.C. Code Ann. § 22-8-40 provides a state mandated compensation schedule for magistrates. Such provision states that

(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<sup>1</sup>, 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);

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<sup>1</sup>Such statutes provide for completion of required training programs, certification and trial observation.

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(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).

Subsection (2) provides a base salary for magistrates based upon a population category. By such provision, inasmuch as it is my understanding that Richland County has a population of one hundred fifty thousand and above, the base salary is fifty-five percent of a circuit judge's salary for the state's previous fiscal year.

It is specifically provided by S.C. Code Ann. § 22-8-40(K) that "[n]o 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." It is also set forth by subsection (L) of such provision that "[n]othing in this section may be interpreted as prohibiting 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." Subsection (M) of that provision also states that "[n]othing contained in this section may be construed as prohibiting a county from paying salaries in excess of the minimum salaries provided for in this section."

Consistent with Section 22-8-40, in the opinion of this office, you are correctly being paid 55% of a circuit judge's salary consistent with subsection (B)(1)(e) in that you have completed a minimum of four years in office and subsection (B)(2) which requires payment of 55% of a circuit judge's salary. In fact, this payment of 55% exceeds what is required by the Richland County plan inasmuch as it states that for a magistrate upon the sixth anniversary of his or her appointment the pay is to be 48% of a circuit judge's salary. Under the Richland plan, the pay then goes up to 52% upon the eighth anniversary of the appointment.

As to your question regarding whether Richland County can adopt a pay plan that provides different pay schedules for magistrates with the same educational background, in this instance, a two year degree, as long as the county meets the state requirements set forth above by Section 22-8-40, I am unaware of any prohibition to their paying a different salary to magistrates of equal educational background. I assume that the magistrate now being paid 60% of a circuit judge's salary had the requisite four years of judicial experience at the time the pay plan was adopted in 1998 so as to meet the requirements for receiving the 60% salary. Such experience appears to be the basis for the distinction inasmuch as you are being paid pursuant to the provisions for a "newly appointed magistrate". I would note that pursuant to the Richland pay plan, upon the tenth anniversary of your appointment you should receive 56% of a circuit judge's salary and upon the twelfth anniversary of your appointment, you would then receive 60% of a circuit judge's salary.

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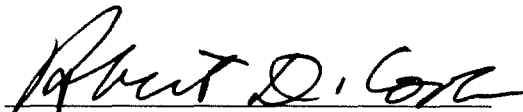
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General