



ALAN WILSON
ATTORNEY GENERAL

June 10, 2011

The Honorable Rodger E. Edmonds
Chief Summary Court Judge
Aiken County
537 Edgefield Road
Belvedere, SC 29861

Dear Judge Edmonds:

In your letter to this office, you have requested an opinion as to when the new salary base of magistrates in Aiken County, which is based upon the official United States Census, will take effect. You have asked whether the new salary base would be effective: (1) February 3, 2011, when the United States Census data for Aiken County was officially released; (2) the start of the 2010-2011 Aiken County fiscal year; or (3) December 31, 2010, "as this was a '2010' census"?

Law/Analysis

Compensation for magistrates is provided for in S.C. Code Ann. §22-8-10 *et seq.* Pursuant to §22-8-40 (B)(2), a base salary for magistrates was provided making the salaries for magistrates in the various counties a percentage of a circuit judge's salary for the state's previous fiscal year, 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.

You indicated that pursuant to the recently released United States Census data, the population of Aiken County has increased to 160,099, from the previous United States Census of less than 150,000.

Therefore, pursuant to §22-8-40 (B) (2)(a), the base salary for Aiken County magistrates is fifty-five percent (55%) of a circuit court judge's salary for the state's previous fiscal year.

The census is taken every tenth year on April 1, such date to be known as the "decennial census date," according to 13 U.S.C. §141(a); that date was April 1, 2010. The tabulation of total population by states must be transmitted to the President of the United States by December 31, 2010, according to §141(b). Census data is then transmitted to the states within one year after the decennial census date, according to §141(c). The federal statutes governing the taking of the census do not say specifically when the census becomes effective as to a particular jurisdiction. In a telephone conversation with an official at the Census Bureau's Regional Office in Charlotte, North Carolina, we were advised that the census becomes official when the census figures arrive in a particular state. According to the Press Release from the United States Census Bureau, the Census data was shipped to South Carolina on March 22, 2011. The officials at the Regional Office were unaware of any prior release of the Census data to South Carolina. Telephone conversations with a demographer in the Division of Research and Statistical Services of the State Budget and Control Board confirm that the Census data was received by South Carolina on March 23, 2011. While the General Assembly has previously adopted the decennial census as the true and correct enumeration of the state and its subdivisions, see §1-1-715, we were advised that such is not necessary to make the figures official in the state.

In a prior decision of this office dated December 13, 1990, we addressed a similar issue regarding when the new salaries of the Probate Judges, which are also based upon the official United States Census, see §8-21-765, would take effect for those judges who would then move to a higher salary level based upon the yet-to-be-released 1990 United States Decennial Census data. We stated that:

... research has turned up numerous cases which reach a variety of results as to the effective date of the census. As noted in 14 Am. Jur. 2d, Census §7,¹ the courts in various jurisdictions have held that the census would not be effective:

until the date of official publication, promulgation, or announcement, or date of final publication or announcement, and in other cases that it is not effective until the date of "legal ascertainment," the date when the census becomes "available," the date of the filing of the enumerator's list, the date of verified and certified enumeration, the date of certification or transmission by the secretary of state, or the date of the publishing and recording of a proclamation by the governor. However, in other cases it has been held that a census is effective from the date of preliminary publication or announcement, or the date or time of public notoriety. And where a statute provides for the taking of a census "as of" a certain date, it has been held in some cases that the census is effective as of that date, although there is authority to the contrary.

¹We note this language is now restated in 14 Am. Jur. 2d, Census §4.

We also cited to the decision of the South Carolina Supreme Court in Forde v. Owens, 160 S.C. 168, 158 S.E. 147 (1931), a case involving salaries of municipal officials which were based on population of the municipalities, where the municipal officials' salaries were to progress to the next level whenever the municipality attained the requisite population according to "the last preceding published United States census. . . ." Id., 158 S.E. at 148. The word "published" in the phrase "last preceding published United States Census" was not taken by the Court to mean the final, official report of the Bureau of the Census as compiled and bound in certain volumes, but rather "its usual general meaning, which is thus given by Webster: 'To make public, to make known to people in general * * * to make public in a newspaper, book, circular, or the like' " Thus, the Court determined that publication of the census results in this case was accomplished by making known authentically the results by census officials to city officials and by bulletins published in the newspapers. Id., 158 S.E. at 150.

Because "[s]uch would be consistent" with advice given to this office by state and federal officials, we advised in our December 13, 1990, opinion that "Probate Judges in those counties which will move to a higher population category as a result of the recent census may wish to begin working now with their county councils toward implementation of the salary increases when the official figures are received in this State." [Emphasis added].

We further noted in the opinion that:

[w]hether the increase in salary for Probate Judges in the affected counties would be retroactive to April 1, 1990 (the decennial census date) or July 1, 1990 (the beginning of the counties' current fiscal year) is doubtful. Article III, §30 of the State Constitutional provides that the "General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made...." This Office has opined previously that such provision would also apply to political subdivisions such as counties and school districts. See Ops. Atty. Gen., dated July 19, 1979; July 14, 1958; August 23, 1979; September 29, 1981; and February 25, 1955, as examples. Thus, we are of the opinion that the salary increases would become effective whenever the census figures become official and would be prospective rather than retroactive, since retroactive application would effectively result in additional compensation being paid after services have been rendered. [Emphasis added].

See Ops. S.C. Atty. Gen., April 7, 1997; June 18, 1991; April 3, 1989; July 19, 1979; see also Op. S.C. Atty. Gen., April 3, 1990 [advising that where there was no statute establishing the effective date of salary increase for commissioners of public works, the only guidance is from Article III, §30; thus, as long as the salary or increase is effective prospectively, no other restriction appears to be applicable].

Considering the above authority, we note prior opinions of this office concluding that magistrates are considered county employees. See, e.g., Ops. S.C. Atty. Gen., October 9, 2009; October 18, 2001; July 19, 2001; December 14, 1999; June 22, 1993; October 12, 1990; see also §22-8-40(H) [stating that

“magistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary”].

Conclusion

We therefore advise that the salary base increases for Aiken County magistrates pursuant to §22-8-40 (B) (2) would be effective from the date when the United States Decennial Census data became official, *i.e.*, when the United States Decennial Census data was received in this state.² Further, because there is no statute which specifically provides for the effective date of the salary increase with respect to magistrates, we reaffirm our December 13, 1990, opinion, and conclude, pursuant to guidance from Article III, §30, that the salary base increases would be prospective.

The foregoing discusses only the relevant statutory and constitutional provisions, and we reach conclusions only as to questions of law. No comment is made as to any question of policy or any other factor which may be considered in determining whether to pay a salary or increase thereof, and this opinion is not to be considered an endorsement of any particular salary or proposal which may be pending before or adopted by Aiken County.

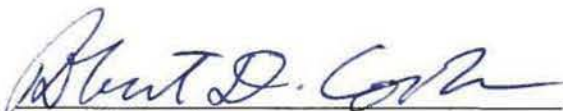
If additional assistance is required, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

²We note that, pursuant to §22-8-40 (M), the South Carolina Court Administration “shall monitor compliance with this section.”