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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 13, 2003

The Honorable William C. Mescher
Senator, District No. 44
P.O. Box 142
Columbia, South Carolina 29202

Re: Magistrate Compensation

Dear Senator Mescher:

You have requested an opinion from this Office concerning a county's authority to reduce the hours and compensation of magistrates during their terms of office. By way of background, you indicate that:

The Berkeley County Council has changed the status of several magistrate positions in the county as authorized by Section 22-1-10. The council-adopted magistrate structure reduces the hours of an incumbent magistrate from 30 to 15 with a corresponding reduction in compensation.

The Berkeley Senate Delegation contends that Council does not have the statutory authority to reduce compensation of an incumbent magistrate. Our conclusion is based on our interpretation of Section 22-8-40(J) of the South Carolina Code of Laws.

Included with your request is a memorandum from the Office of Senate Research on the issue. With regard to this situation, that memorandum reflects that:

The Berkeley County Senatorial Delegation and the Berkeley County Council are entering into an agreement to change the status of several magistrate positions. Pursuant to the agreement, the total number of work hours for all the magistrates in the county will remain the same, but the status of several positions will change. Currently, the work hours of one of the three part-time magistrates holding bond court is set at thirty hours per week. The concern is that once the agreement is

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adopted, the county council will reduce this magistrate's hours from thirty to fifteen.
This magistrate's term ended April 30, 2003.

The Office of Senate Research concluded that "... in the present situation, this particular magistrate's hours may not be reduced by the county council. In their memorandum, Senate Research did note, however, that "... once [the magistrate] is reappointed or if the total number of magistrate hours are reduced by agreement or if there is some other material change that warrants a reduction, his hours may be reduced." Senate Research's conclusion is based generally on S.C. Code Ann. §22-1-10(A).

While this Office has neither the authority nor capability to determine factual issues, such as what constitutes a material change in conditions, we can comment on various legal issues raised in an opinion request. As is explained more fully below, it is our opinion, in general agreement with that of the Office of Senate Research, that a county has the ability to reduce a magistrate's work hours and compensation only when certain conditions are present.

LAW/ANALYSIS

S.C. Code Ann. § 22-1-10 provides that "[t]he Governor, by and with the advice and consent of the Senate, may appoint magistrates in each county of the State for a term of four years and until their successors are appointed and qualified." That Section also provides that "... 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" Section 22-8-40 provides a mechanism for determining the minimum salary to be paid magistrates and the number of magistrates each county is to have. County governments are given a certain amount of leeway in these matters by Section 22-8-40 in that counties can determine whether their magisterial positions will be filled by full-time or part-time magistrates, the number of hours part-time magistrates are to work and the ability to pay magistrates more than the minimum established salary.

While Section 22-8-40 was substantially amended by Act No. 226 of 2000, the Magistrates Court Reform Act of 2000, certain provisions in the Section have been in existence since at least 1988 (See Act No. 678 of 1988). One such provision was originally codified as Section 22-8-40(I), but is now codified as Section 22-8-40(J). That subsection provides that:

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.

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As referenced in your request letter, it appears that a magistrate's salary may not be reduced during his tenure and his tenure continues even after his term ends if he is reappointed. This would seem to indicate that a magistrate's salary could never be reduced for the entire time that he is in office if he continues to receive consecutive reappointments.

Section 22-8-40(J) cannot, however, be read in a vacuum. After the initial passage of what is now known as Section 22-8-40(J), the General Assembly enacted Act No. 136 of 1991. That Act amended Section 22-1-10 and added, among other things, the following language:

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. Nothing provided in this section prohibits the raising of compensation or hours and compensation during a term of office. No magistrate may be paid for work not performed except for bona fide illness or as otherwise provided by law.

Different statutes in pari materia, though enacted at different times, and not referring to each other must be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). If an irreconcilable conflict exists, the statute later in time will prevail as the later expression of legislative will. See: Feldman v. S. C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); See also Op. S.C. Atty. Gen., dated April 30, 1999.

As it is the later expression of legislative will, the above cited provision of Section 22-1-10(A) must be given effect. It should also, if possible, be reconciled with Section 22-8-40(J) so that the full intent of the General Assembly can be implemented. It appears that the statutes are capable of a logical reconciliation. 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.

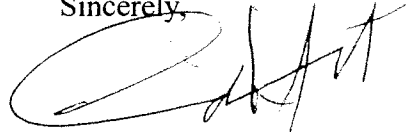
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Additionally, prior opinions of this Office also provide support for the conclusion that Section 22-8-40(J) does not flatly prohibit a county from reducing the hours and compensation of magistrates based on the provisions of Section 22-1-10(A). In 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."

CONCLUSION

S.C. Code Ann.22-8-40(J) provides the general rule that a magistrate's salary is not to be reduced during his tenure in office. Section 22-1-10(A), however, provides an exception to this general rule and allows counties to reduce the hours and compensation of a magistrate upon the existence of certain conditions discussed above.

Sincerely,



David K. Avant
Assistant Attorney General