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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 18, 2001

John G. Frampton, Esquire
Dorchester County Attorney
Post Office Box 430
Summerville, South Carolina 29484

Re: Your Letter of June 20, 2001
S.C. Code Ann. §§22-1-10, 22-2-40 & 22-8-40

Dear Mr. Frampton:

In your above-referenced letter, you request an "opinion concerning the interpretation of [S.C. Code Ann. §§22-1-10, 22-2-40 & 22-8-40]" as those statutes relate to the number of magistrates which may be appointed to serve in a particular county. By way of background, you indicate:

> In January, 1999, pursuant to Section 22-1-10, [Dorchester] County notified the delegation of the number of full-time and part-time magistrate positions available, the number of hours to be worked, the area of the County to which each was assigned, and the compensation to be paid. That notification advised the Delegation that Dorchester County had available two (2) full-time magistrates working forty (40) hours each, one (1) part-time magistrate working thirty (30) hours (a 3/4 FTE), one (1) part-time magistrate working twenty (20) hours (a ½ FTE) and two (2) part-time magistrates working ten (10) hours each (2, 1/4 FTEs). As a result of this notification, it is the position [of] Dorchester County Council that the total number of hours available was 150 and the total FTEs available was 3.75. Senator [William S.] Branton [Jr.], however, takes the position that Dorchester County has available two (2) full-time positions and seven (7) part-time positions inasmuch as part-time positions are calculated at 4 positions for every full-time position. He believes that the hours worked by part-time magistrates as determined by County Council is irrelevant to the calculation of the FTEs. He maintains that these seven part-time magistrates can each work up to 39 hours each and thus be in compliance with the statutory requirements.

You further indicate that it is your opinion, as well as that of the Dorchester County Council, that the number of hours worked by a part-time magistrate must be considered in determining the number

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of magistrate positions available. By way of illustrating your point, a part-time magistrate working 30 hours per week, a 3/4 FTE, would count as three part-time magistrate positions for purposes of the statutory requirements of Section 22-8-40. It is your belief that Senator Branton's method of calculating the number of magistrate positions available would lead to an excessive number of appointments.

Section 22-8-40(C) sets out the formula for determining the required number of magistrates which are to be appointed in each county. According to the information provided, the formula as applied to Dorchester County dictates that 3.75 magisterial positions are available. Section 22-8-40(E) provides that "[p]art-time magistrates are to be computed at a ratio of four part-time magistrates equals one full-time magistrate." Part-time magistrates' salaries are set by §22-8-40(F), which provides:

> Part-time magistrates are entitled to a proportionate percentage of the salary provided for full-time magistrates. This percentage is computed by dividing by forty the number of hours a week the part-time magistrate spends in the performance of his duties. The number of hours a week that a part-time magistrate spends in the exercise of the judicial function, and scheduled to be spent on call, must be the average number of hours worked and is fixed by the county governing body upon the recommendation of the chief magistrate. However, a part-time magistrate must not work more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.

Further, according to §22-8-10, "'Part-time magistrate' means a magistrate who regularly works less than forty hours a week performing official duties required of a magistrate as a judicial officer."

As you are aware, this Office has issued a previous opinion on this issue which is consistent with Senator Branton's interpretation of the relevant statutes. In an opinion dated April 3, 1992, we considered the question of whether a magistrate working twenty hours a week and receiving approximately half the salary of a full-time magistrate should be considered the equivalent of a ½ full-time magistrate. After a comprehensive review of the relevant statutes and seeking to ascertain the intent of the Legislature in enacting the statutes, this Office concluded that these factors were not relevant to determining the "value of the part-time position." The opinion noted that "It has been our construction that the determination of whether a magistrate is full-time or part-time is based solely upon the number of hours worked and that if the number of hours worked is less than forty, that individual should be considered a part-time magistrate." See OP. ATTY. GEN. (No. 92-17, Dated April 3, 1992). This conclusion has been consistently reached by this Office when considering similar issues. For example, in an opinion dated February 16, 1989, addressing the question of whether "a county [is] limited to establishing 10-hour work weeks for part-time magistrates ... [pursuant to §22-8-40(C)] ...," we stated that the relevant statutory "provisions imply that part-time magistrates may work any period as long as it is less than forty hours a week ... [and] counties are

not limited to establishing 10-hour work weeks for magistrates." Additionally, in a February 13, 1992 opinion, we stated that "a county is not required to pay a part-time magistrate for a minimum of ten hours a week but instead only for those hours worked which, of course, may not exceed thirty-nine hours a week."

It is well recognized that the Legislature is presumed to be aware of opinions of the Attorney General and, absent changes in the law following the issuance thereof, has acquiesced in the Attorney General's interpretation. See OP. ATTY. GEN. (Dated April 22, 1998). Despite this Office's longstanding and consistent interpretation of the relevant law concerning the hours worked by part-time magistrates as they relate to the "value of the part-time position," the General Assembly has taken no steps to alter the statutory provisions.

Moreover, "[c]onstruction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 351 S.E.2d 146, 148 (1986); Welch v. Public Service Commission, 297 S.C. 378, 377 S.E.2d 133 (S.C. App. 1989). It has also been recognized that while the agency's interpretation might not be the only reasonable one, the courts were generally required to defer to the agency's construction so long as it was reasonable. See OP. ATTY. GEN. (Dated October 20, 1997). This Office has previously recognized that South Carolina Court Administration is charged with monitoring compliance with Section 22-8-40 and deferred to Court Administration concerning compliance with the statute. See OP. ATTY. GEN. (Dated October 31, 1994). By letter dated July 11, 2001, Rosalyn W. Frierson, Director of South Carolina Court Administration, indicated her Office's agreement with our April 3, 1992 opinion and stated that "[a] part-time magistrate may work any period of time not to exceed thirty-nine hours per week and still be considered only one-quarter of a full-time magistrate."

Finally, while Sections 22-1-10 and 22-2-40 may relate to the manner of appointment, the duties and possible increase or decrease in the number of magistrates through agreement, etc., the answer to your query turns on the interpretation of §22-8-40. As the Supreme Court held in Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996), "§ 22-8-40(B) requires counties to fund the higher number of magistrates mandated by application of the formulas therein." Such a holding is consistent with this Office's previous opinions and the South Carolina Court Administrations interpretation cited above.

Accordingly, the opinion issued April 3, 1992 is reaffirmed as the opinion of this Office. The number of hours worked by a part-time magistrate, assuming less than forty, does not determine the "value of the part-time position."

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked.

It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

David K. Avant
Assistant Attorney General

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