



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 16, 1995

Michael T. Brittingham, Esquire
Attorney for Cherokee County
Post Office Box 2757
Greenville, South Carolina 29602

RE: Informal Opinion

Dear Mr. Brittingham:

By your letter of October 2, 1995, on behalf of Cherokee County, to Attorney General Condon, you have advised that the chief magistrate of Cherokee County suffers from a physical condition that prevents him from performing certain aspects of his official duties. The magistrate is unable to travel to his office to hear cases and perform similar duties, but he is able to perform a limited amount of his ministerial duties from his home. With respect to these circumstances, you have sought an opinion as to the following question:

What is Cherokee County's obligation for the payment of salary and the provision of employment benefits to a magistrate who is unable to perform his official duties because of physical disability?

Stated another way, you asked whether Cherokee County should continue to follow its leave policies with respect to payment of salary and the provision of benefits to a physically disabled magistrate, or whether the County must continue to pay a disabled magistrate during the remainder of his four-year term of office.

Magistrates are appointed by the Governor with the advice and consent of the Senate for four-year terms of office. Art. V, §26, South Carolina Constitution (1994 Cum. Supp.); S.C. Code Ann. §22-1-10 (1994 Cum. Supp.). The fourth paragraph of §22-1-20 provides as follows:

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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. [Emphasis added.]

It is observed that this paragraph was adopted as a part of Act No. 136, 1991 Acts and Joint Resolutions.

Compensation of magistrates is provided for in S.C. Code Ann. §22-8-10 et seq. Clearly, compensation and other provision of facilities and support staff are responsibilities which the General Assembly has assigned to the respective counties, as evidenced by statutes such as §22-8-30 (the county is to "provide sufficient facilities and personnel for the necessary and proper operation of the magistrates' courts in that county []" and the like) and §22-8-40 (establishes a base salary schedule and details other aspects of compensation of magistrates). Section 22-8-40(E) requires counties to pay a cost of living increase to magistrates in the amount provided classified state employees in the annual appropriations act of the previous fiscal year. Section 22-8-40(G) provides that magistrates "are entitled to the same perquisites as those employees of the county of similar position and salary." In addition, §22-8-40(I) provides that "[a] magistrate who is receiving a salary greater than that provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed." Finally, South Carolina Court Administration is charged with monitoring compliance with §22-8-40. Chapter 8 of Title 22 was adopted in 1988 as Act No. 678, Part I, §7.

In construing statutes such as these, the cardinal rule of statutory interpretation is to ascertain and effectuate legislative intent whenever it is possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where the terms of a statute are clear and unambiguous and leave no room for construction, such terms must be applied according to their literal meaning. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977). Statutes in pari materia must be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). However, if it is not possible to reconcile two statutes, under the principle that the last expression

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of the legislative will is the law, where conflicting provisions are found in different statutes, the last in point of time will be deemed controlling. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943).

Section 22-1-10 speaks in terms of "compensation." In Op. Att'y Gen. dated April 10 1995, this Office advised as to compensation:

The ordinary meaning of "compensation" as it is applied to public officers or employees is remuneration in whatever form it may be given. State v. Bland, 91 Kan. 160, 136 P. 947, 949 (1913). The term will be held to include not only a regular salary, but also costs and fees. Mullins v. Marion County, 72 S.C. 84, 86 (1904). While sometimes the word "compensation" is regarded as synonymous with "salary," Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596 (1931), often it is not, and usually includes not only salary, but fees, pay or other remuneration for official services. State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S.W. 1106 (1917). As the Court stated in St. Louis Fire Fighters Assn. Local No. 73 AFL-CIO v. City of St. Louis, 637 S.W.2d 128, 130 (Mo.App. 1982),

"Compensation" is defined as the remuneration or wages given to an employee in salary, pay or emolument. The ordinary meaning of the term "compensation" as applied to officers is remuneration in whatever form it may be given, whether it be salaries, fees or both combined. It is broad enough to include other remuneration for official services such as mileage or traveling expenses and the repayment of amounts expended. The term is not necessarily synonymous with "salary." ... "Compensation" is the generic term and includes salary, fees, pay, remuneration for official services performed in whatever form or manner or at whatsoever periods the same may be paid. (emphasis added, citations omitted).

In addition, judicial decisions have found fringe benefits to be a part of "compensation": health insurance and other fringe benefits were deemed to constitute compensation within the meaning of Title VII of the Civil Rights Act of 1964, as amended. Equal Employment Opportunity Commission v. J. C. Penney Co., Inc., 843 F.2d 249, 252 (6th Cir. 1988); Newport News Shipbuilding & Dry Dock Co. v. Equal Employment Opportunity Commission, 462 U.S. 669, 682, 103 S.Ct. 2622, 2630, 77 L.Ed.2d 89 (1983) ("Health

insurance and other fringe benefits are 'compensation, terms, conditions, or privileges of employment.'"). It is apparent that the courts tend to construe the notion of compensation quite broadly.

The plain language of §22-1-10, fourth paragraph, evidences a strong intent that a magistrate's compensation is to remain the same throughout the magistrate's term of office. The window of opportunity to change a magistrate's number of work hours, work location, and compensation is extremely limited, as are the reasons for which such may be changed¹. The statute even contemplates that a magistrate not be paid for work not performed "except for bona fide illness ...".² To fail to pay the magistrate his usual compensation during this time of bona fide illness would seem to disregard the plain language of the statute and would have the effect of reducing the magistrate's compensation during his term of office. If there is deemed to be any conflict between §22-1-10 and Chapter 8 of Title 22, I am of the opinion that any doubt would be resolved by following §22-1-10, which statute reflects the most recent legislative expression as to compensation of magistrates.

Based on the foregoing, I am of the opinion that Cherokee County would continue to pay the compensation which it has been paying to the magistrate in question during his present term of office. Compensation would include salary and whatever benefits comprise the compensation package ordinarily paid to the magistrate.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that

¹Such changes may be made if specifically allowed by statute or "if 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." §22-1-10, fourth paragraph. I do not locate any specific allowance to do so within a statute. The second combination of circumstances is not applicable here because both prongs must be met; while a material change may have occurred, the four-year time frame is not met here, according to our information and belief.

²It is assumed, indeed understood, for purposes of this opinion that a "bona fide illness" exists with respect to the magistrate in question, i.e., that obtaining a physician's statement or other proof of "bona fide illness" is not an issue in this instance.

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the foregoing has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General