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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 14, 1996

Ms. Nancy Bloodgood, Esquire
Deputy County Attorney
2 Courthouse Square, Room 401
Charleston, South Carolina 29401-2263

RE: Informal Opinion

Dear Ms. Bloodgood:

By your letter of April 2, 1996, you requested an opinion as to whether every four years, upon commencement of new magisterial terms, part-time magistrates' hours may be reduced if there is a material change in conditions (i.e., annexation of county territory or less work, as indicated by caseload), so that a county could correspondingly reduce the salary proportionately to the number of hours worked by the magistrate in the new term? You have concluded that such may be done; for the reasons following, I concur with your conclusion.

As you observed in your request letter, this Office issued an opinion on July 31, 1991, concerning changes which might be made in magistrates' salaries and hours. Of specific relevance to your question is the following from that opinion:

The opportunity for change in the number of full-time/part-time positions, number of hours worked, and compensation for each position is also referenced pursuant to the language in S.62 [now S.C. Code Ann. §22-1-10] which mandates that if the county governing body fails to timely inform the Senators in the manner specified, the positions remain as previously established. The opportunity for change is further provided for by the language "(e)ach magistrate's number of work hours, compensation, and work location must remain the same ... except for a change ... authorized by the county governing body at least four years after the

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magistrate's most recent appointment and after a material change in conditions has occurred which warrants the change."¹

In addition, in an opinion dated April 29, 1991, the issue of reduction of the salary of a current part-time magistrate being reduced upon reappointed to a new four year term, in proportion to the reduction of that part-time magistrate's hours, was addressed. Referencing an opinion dated February 16, 1988, in which it was concluded that the hours for part-time magistrates could vary, as well as S.C. Code Ann. §22-8-40(D), this Office stated:

...pursuant to Section 22-8-40(D) 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

¹S.C. Code Ann. §22-2-10 (1995 Cum. Supp.) provides in relevant part:

At least ninety days before the date of the commencement of the terms provided in the preceding paragraph and every four years thereafter, 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. If the county governing body fails to inform, in writing, the Senators representing that county of the information as required in this section, then the compensation, hours, and location of the full-time and part-time magistrate positions available in the county remain as designated for the previous four years.

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. ... [Emphasis added.]

Clearly, the ability to change work hours, compensation, and work location of a magistrate is contemplated upon the conditions stated.

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wage basis and not as a fixed sum received regardless of the number of hours worked. ...

Consistent with this conclusion that a part-time magistrate's salary should be considered on an hourly wage basis, 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. There would not be a conflict with Section 22-8-40(I) assuming that the salary on an hourly basis is not being reduced.

Section 22-8-40(D) provides as to compensation of part-time magistrates:

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.

In addition, the referenced §22-8-40(I) 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. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

Based on the foregoing, I concur with your conclusion that every four years, upon the commencement of new magisterial terms, part-time magistrates' hours may be reduced if there is a material change in conditions and that the county can correspondingly reduce the salary proportionately to the number of hours worked by the magistrate in the new term.

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.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General