



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 13, 1998

Timothy H. Pogue, Esquire
Marion County Attorney
Post Office Box 790
Marion, South Carolina 29571

RE: Informal Opinion

Dear Mr. Pogue:

Your opinion request has been forwarded to me for reply. You have informed this Office that in 1982, the Marion County Council entered into an agreement with the City of Mullins whereby a magistrate would be assigned to serve as Municipal Court judge for the city. This agreement called for the city to pay a stipend to the county for the magistrate's service. Recently, the city appointed a new city judge who was not a magistrate. Upon this appointment, the city terminated the agreement with the county and stopped paying the stipend. Since the city was no longer using the magistrate and was not paying the stipend, the county reduced the amount of pay received by the magistrate accordingly. The magistrate filed a petition pursuant to the "Magistrate's Pay Act" arguing that in light of Section 22-8-40(I) of the South Carolina Code of Laws, the county was not permitted to reduce the magistrate's salary. You have asked for an opinion as to whether it was appropriate for the county to reduce the magistrate's salary.

The Magistrate's Pay Act, S.C. Code Ann. § 22-8-10 et seq., sets forth the base amount of compensation due magistrates in this state. The base salary of a magistrate is computed according to the population of the county in which the magistrate is located. S.C. Code Ann. 22-8-40(B)(1). In addition, the law provides that the base salary of a magistrate must be adjusted annually based on the percentage amount of the cost of living increase paid to classified state employees in the annual state general appropriations act of the previous fiscal year. S.C. Code Ann. § 22-8-40(E). Nothing in the Act provides

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that a supplement paid to a magistrate for additional service as a municipal court judge is included in the base salary of the magistrate.

The provision cited by the magistrate in his petition is Section 22-8-40(I). This section provides:

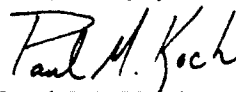
A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed. (emphasis added).

As you can see, Section 22-8-40(I) prohibits a reduction in salary for a magistrate who is receiving a salary greater than provided for his position under the provision of the Act. However, the Act does not specifically provide that a supplement of the type present here is included in the salary of a magistrate. Therefore, to determine whether it is appropriate for the county to reduce the magistrate's salary in this instance, the specific terms of the agreement between the county and the magistrate would have to be analyzed. This analysis would focus on whether the agreement calls for the supplement to be included in the magistrate's salary or whether the supplement is in addition to the magistrate's salary. As such is a factual determination, it is beyond the scope of an opinion of this Office. Op. Atty. Gen. dated December 12, 1983.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General