

The State of South Carolina



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July 31, 1991

The Honorable Michael T. Rose
Senator, District No. 38
402 Old Trolley Road
Summerville, South Carolina 29483

Dear Senator Rose:

In a letter to this Office you questioned whether recent legislation, S.62, authorizes the Berkeley County Council in 1991 to split a current full-time magistrate's position into two or more part-time positions and pay the current full-time magistrate less than the current full-time compensation if that full-time magistrate is reappointed as magistrate and designated as a part-time magistrate. This Office had earlier advised you in an opinion dated April 29, 1991 that pursuant to the provisions of Section 22-8-40(I) of the Code, which prohibit the reduction in the salary of a magistrate during his tenure in office, a full-time magistrate's salary could not be reduced if that individual is reappointed as magistrate. The opinion stated

Pursuant to Section 22-8-40(A) of the Code, a county governing body is given the authority to designate magistrates as either full-time or part-time. Therefore, a county would be authorized to convert a magisterial position from a full-time position to a part-time position. However, due to the requirements of Section 22-8-40(I), I am unaware of any basis to reduce the magistrate's salary comparatively. Therefore, present statutory provisions do not appear to provide for the reduction of the salary of a full-time magistrate even if the individual's hours are reduced.

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Pursuant to the referenced legislation, magistrates for Berkeley County "... shall serve terms of four years commencing May 1, 1991." The legislation further provides:

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. Nothing provide 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.

Pursuant to subsection 2,

Notwithstanding whether the names of appointees have been received by the Senate for advice and consent, the information required to be provided by the county within ninety days of May 1, 1991, must be provided within sixty days of the approval of this act by the Governor.

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In preparing this opinion, I reviewed the tape of the Conference Committee meeting held concerning this legislation. Based upon our review of the legislation and the comments of the members of the Conference Committee, it is the opinion of this Office that a current full-time magisterial position may be split into two or more part-time magisterial positions. If a current full-time magistrate is reappointed as magistrate and designated a part-time magistrate, that individual's compensation could accordingly be reduced commensurate with the part-time status. Such is consistent with the language in S.62 which authorizes a county governing body to advise the Senators prior to the commencement of magisterial terms of the number of full-time and part-time magisterial positions, the number of work hours for each position, and the compensation designated for each position.

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

Inasmuch as the terms for the magistrates in Berkeley County had commenced before S.62 became effective on June 12, 1991, the provisions of Section 2 would be applicable. As stated, the information required of a county governing body would then be required within 60 days of such date. Moreover, to the extent this construction is in conflict with previously enacted statutory provisions, it is our conclusion that such are impliedly amended.

With kind regards, I am

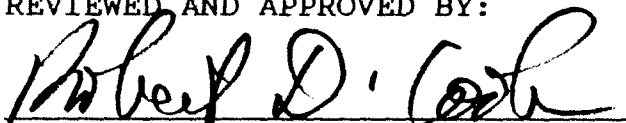
Very truly yours,



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REVIEWED AND APPROVED BY:



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