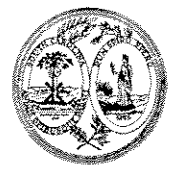


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The State of South Carolina



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April 23, 1990

The Honorable Daniel F. Pieper
Judge, Berkeley County
Post Office Box 60965
N. Charleston, South Carolina 29419-0965

Dear Judge Pieper:

In a letter to this Office you referenced Section 22-8-40(E) of the Code which states

A cost of living increase must be paid by the county in the amount provided classified state employees in the annual state general appropriations act of the previous fiscal year. The base salaries provided for in this Part 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.

You asked "if population figures shift a county from one salary level to a higher level, is it correct to say that the base figure now listed in the statute for the higher level must be adjusted for any cost of living increases granted since implementation of the statute, thereby creating a new base figure every time a cost of living allowance (COLA) is granted?" You gave as an example a new base figure under Section 22-8-40(B)(1) (C) of the Code of \$27,040. after taking into consideration a 1989 four (4%) per cent adjustment and a 1990 four (4%) adjustment.

As stated, Section 22-8-40(E) provides for the annual adjustment of the base salaries established in subsection (B) in accordance with the cost of living increase provided. Therefore any base salary figure established by such provision would be adjusted in accordance with cost of living increases granted since the statute was implemented.

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You next asked whether magistrates lose the benefit of any cost of living increase or raise granted prior to moving to a higher pay category. Pursuant to Section 22-8-40(B) base salaries for magistrates are established and vary according to the population of an individual county. As referenced in the first question, the base salaries are adjusted depending upon any cost of living increase granted. However, you questioned whether a magistrate loses the benefit of any cost of living increase granted prior to moving into the next pay category.

Based upon my review of statutory provisions for magistrates' compensation, I am unaware of any basis by which a magistrate could "carry over" any cost of living raises granted prior to moving into another pay category. Section 22-8-40 fails to provide any factor for longevity. However, pursuant to subsection (I) a magistrate's salary may not be reduced during his tenure in office. Therefore, any magistrate already receiving more than the base salary plus any raises as provided in the next pay category into which the magistrate would move could not have his compensation reduced to the salary provided in accordance with the new population base. Moreover, pursuant to subsection (K) of Section 22-8-50, there are no prohibitions against paying a magistrate more than the base salary provided. Therefore any decision as to magisterial salaries would be a matter for resolution by the county.

If there is anything further, please advise.


Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions