

The State of South Carolina



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March 6, 1990

The Honorable Robert B. Brown
Member, House of Representatives
407A Blatt Building
Columbia, South Carolina 29211

Dear Representative Brown:

In a letter of this Office you raised several questions in regard to magisterial positions in Marion County. You referred to a letter from Mr. George Markert with the State Court Administration Office who stated that local legislation had provided for six magistrates and up to four special (ministerial) magistrates for Marion County, See: Acts No. 563 of 1954, 132 of 1977 and 282 of 1985. Act No. 89 of 1949 stated that offices for five of the magistrates were to be located in specified areas. Mr. Markert noted that pursuant to Act No. 678 of 1988, which established a procedure for determining the maximum number of magistrates in each county, Marion County is entitled to 2.5 magistrates.^{1/} The legislation did not specify location for such magistrates. He further stated

... (b)ecause Act 678 of 1988 empowers the county to designate magistrates as full-time or part-time, the county's designation of full-time or part-time magistrate positions necessarily determines the number of magistrates. Determination of the number of magistrates has an impact on location. For example, should the county choose to designate 2 full-time and 2 part-time magistrates, Marion County would have reached its maximum number of magistrates, as required by Act 678 of 1988. The 5 geographical locations could not be filled, as required by earlier local legislation. Therefore, it is arguable that the earlier local legislation (Act 89 of 1949, Act 563 of 1954, Act 132 of 1977 and Act 282 of 1985) has been superseded by Act 678 of 1988.

^{1/} As Mr. Markert explained, the ratio for magistrates could be reached by a number of ways: 2 full-time and 2 part-time; 1 full-time and 6 part-time; 10 part-time.

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You have asked whether the legislation previously referenced which specified locations for magistrates was superseded by Act No. 678 of 1988. This question would particularly arise if the designation of magistrates as full or part-time results in a number of magistrates less than the number for the locations previously specified.

As stated, pursuant to the provisions of Act No. 678 of 1988, specifically, Section 22-8-40 of the Code, Marion County is presently entitled to 2.5 magistrates. Obviously, such number is inconsistent with provisions of special legislation which refer to five geographical locations for magistrates. It is generally stated that a later general statute which does not expressly repeal a prior special statute will be considered as not intended to affect the earlier special statute unless the intent to repeal is "... clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both." See: Op. Atty. Gen. dated July 25, 1979. Moreover, while implied repeals are not favored and special laws usually take priority over general laws, as stated in a prior opinion of this Office dated May 16, 1984 "... when a comprehensive revision of a particular subject is promulgated, the special law may be deemed to have been repealed by implication." The referenced provisions of Act No. 678 appears to be irreconcilable with the cited special legislation for Marion County. Moreover, Act No. 678 is obviously a comprehensive revision of State statutes pertaining to magistrates. Therefore, I am in agreement with Mr. Markert that the earlier legislation providing for locations for Marion County magistrates has probably been superseded or impliedly repealed. Obviously, however, legislation clarification is recommended to resolve any ambiguity.

You also asked whether existing jury areas dictate locations or number of magistrates and whether the county can specify the location of magistrates. Pursuant to Section 22-2-190 of the Code, five jury areas for Marion County are established. Such jury areas correspond to the locations for magistrates in Marion County previously referenced. Section 22-2-170 of the Code states:

(m)agistrates shall have jurisdiction throughout the county in which they are appointed. Criminal cases shall be tried in the Jury Area where the offense was committed, subject to a change of venue....

Another provision, Section 22-2-40 of the Code, authorizes more than one magistrate to be assigned to the same jury area.

None of the provisions cited above relating to jury areas appear to mandate specifically either the number or location of magistrates. Again, it appears that the number would be controlled by

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Section 22-8-40. As to location, Section 22-2-40 of the Code states "(t)he General Assembly shall provide for the ... location of magistrates in each county." Section 22-8-30 of the Code states that "(e)ach county shall provide sufficient facilities ... for the necessary and proper operation of the magistrates' courts in that county." Legislative clarification is again recommended to clarify any questions regarding location and the jury areas for a particular county. Such would especially be needed because of the provision cited above which states that criminal cases are to be "... tried in the Jury Area where the offense was committed." Therefore, there may be a basis for reducing the number of jury areas in circumstances where there is a reduction in the number of magistrates authorized by Section 22-8-40.

You also asked whether local legislation is needed to clarify existing law. Provisions of the State Constitution, namely Article V, Section 1 and Article VIII, Section 14, typically mandate uniform statewide legislation in dealing with magistrates' courts in this State. See: Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981); State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E. 772 (1978). As stated by the State Supreme Court in Crowe, "... magistrates' courts are a part of the unified judicial system ... and therefore, are included within the requirements for uniformity prescribed by that Article." 272 S.C. at 47. Therefore, to avoid potential constitutional problems, consideration should be given to general statewide legislation in clarifying any ambiguities relating to the magistrates' courts.


If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:


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