

The State of South Carolina

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Office of the Attorney General

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June 19, 1990

The Honorable Caldwell T. Hinson  
Senator, District No. 16  
1115 Chesterfield Avenue  
Lancaster, South Carolina 29720

Dear Senator Hinson:

You have inquired as to whether an individual may be appointed Lancaster County magistrate following the death of a recent part-time magistrate. With such death, you indicated that there are two full-time magistrates and five part-time magistrates serving the County.

Pursuant to Section 22-1-10 of the Code

The Governor, by and with the advice and consent of the Senate, may appoint magistrates in each county of the State who shall hold their office for the term of four years and until their successors are appointed and qualified. Magistrates serving the counties of ... Lancaster ... shall serve terms of four years commencing May 1, 1990.

You indicated that no appointments have been made for terms commencing May 1, 1990 and instead, magistrates are continuing to hold-over from their previous appointments.

Section 22-8-40 of the Code provides that

The maximum number of magistrates in each county is the greater of that number determined by taking one magistrate for every twenty-eight thousand persons in each county or that number determined by taking the average of the ratio of one magistrate for every twenty-eight thousand persons in each county as provided by item (2)

The Honorable Caldwell T. Hinson  
Page 2  
June 19, 1990

of this section and the ratio of one magistrate for every one hundred fifty square miles of area in each county as provided in item (3) of this section. However, no county is required to have fewer than the equivalent of one full-time magistrate and one part-time magistrate. If a fraction of a magistrate results, the county must round off the fraction, establishing an additional part-time magistrate. No additional magistrates may be added until a county has less than the ratio.

Pursuant to subsection (c) of such provision, part-time magistrates are to be computed at a four to one ratio whereby four part-time magistrates equal one full-time magistrate. Subsection (L) of such provision indicates that the State Court Administration office is to monitor compliance with Section 22-8-40. According to my telephone conversation with Mr. Motte Talley at the Court Administration office, Lancaster County is entitled to three magisterial positions pursuant to the ratio established by Section 22-8-40.

As referenced, Lancaster County presently has two full-time magistrates and five part-time magistrates serving in hold-over status. Inasmuch as four part-time magistrates equals one full-time magistrate, with the five part-time magistrates presently serving, Lancaster County exceeds the ratio formula by one part-time position. Therefore, there is presently no position which could be filled by a new appointment assuming of course that no steps are being taken to fill any positions pursuant to Section 22-1-10. As to any question concerning the status of the present magistrates, as stated in a prior opinion of this Office dated December 9, 1988, it was our understanding that

... while a maximum number of magistrates for each county was established by the legislation, it was the legislative intent that no magistrates currently serving on the effective date of ... (the legislation) ... would lose their positions. Instead, the mechanism for reaching the designated number in counties where the number of magistrates presently exceeds the maximum number would be by factors such as death or resignation. Also, presumably, such maximum number would be considered in making appointments to new terms.

I am also enclosing a copy of another prior opinion of this Office dated March 6, 1990 which comments on the procedure regarding appointment of magistrates whose terms were to commence May 1, 1990.

The Honorable Caldwell T. Hinson  
Page 3  
June 19, 1990

If there is anything further, please advise.

Sincerely,



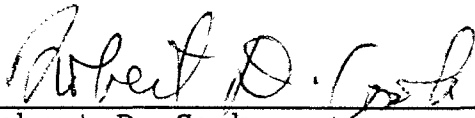
Charles H. Richardson  
Assistant Attorney General

CHR/an

Enclosure

cc: Motte Talley, Staff Attorney  
South Carolina Court Administration

REVIEWED AND APPROVED BY:



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Robert D. Cook  
Executive Assistant for Opinions