

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

May 6, 1991

The Honorable Michael T. Rose  
Senator, District No. 38  
606 Gressette Senate Office Building  
Columbia, South Carolina 29202

Dear Senator Rose:

In a letter to this Office you raised the following questions:

1. If a Berkeley County Magistrate has never been expressly designated by Berkeley County's government as either a "full time" or a "part time" magistrate but during the time since the passage of the current magistrate law that magistrate has been paid more than the minimum salary required for a full time magistrate and has worked at least 40 hours per week, may this magistrate be considered a "part time" magistrate for the purpose of determining whether or not upon reappointment as a magistrate in 1991 that magistrate's hours may be reduced and his salary reduced proportionately. Or, in the alternative, must that magistrate be considered a "full time" magistrate whose salary cannot be reduced even if his hours are reduced upon reappointment as a magistrate in 1991?

2. May the Governor and/or the Senators of Berkeley County appoint in 1991 a magistrate to replace a magistrate in Berkeley County whose term of appointment has expired and who is on holdover status, without at the same time appointing or reappointing all other magistrates in Berkeley County as required by the current magistrates law but wait to appoint or reappoint

The Honorable Michael T. Rose  
Page 2  
May 6, 1991

all those other magistrates at a later date in 1991? If so, what are the legal consequences, if any, of appointing or reappointing new magistrates in Berkeley County in 1991 in two successive steps or stages rather than all at one time, as described above?

Pursuant to Section 22-8-10(2) of the Code a "full-time magistrate" is defined as

... a magistrate who regularly works forty hours a week performing official duties required of a magistrate as a judicial officer.

A "part-time magistrate" is defined by subsection (3) as

... a magistrate who regularly works less than forty hours a week performing official duties required of a magistrate as a judicial officer.

Such provisions became effective January 1, 1989. Section 22-8-40(A) of the Code states that county governing bodies "... shall designate magistrates serving within the county as either full time or part time." Section 22-8-40 also provides a salary structure for magistrates and further provides that part-time magistrates shall be paid a proportionate percentage of the salary provided full-time magistrates. The number of hours a week that a part-time magistrate "spends in the exercise of the judicial function" is fixed by the county. Section 22-8-40 also became effective January 1, 1989.

I was informed by the State Court Administration office that their records reflect a designation of magistrates in Berkeley County as full-time or part-time. I presume that the magistrates who worked less than forty hours a week have been paid consistently with the provisions of Section 22-8-40 (the proportionate percentage based on the number of hours worked) and that the salaries of magistrates within the definition of "full-time" are also consistent with Section 22-8-40.

Referencing the above, it appears that even though certain magistrates may not have been expressly designated as either full-time or part-time magistrates, in practice, the distinctions have been made. Reference may be made to the number of hours worked and the compensation received by these individuals. Therefore, if a magistrate has been paid more than the minimum salary provided for a full-time magistrate and the magistrate has worked at least forty hours a week, that individual should be considered a "full-time magistrate" for purposes of Sections 22-8-40. Consistent with the opinion to you dated April 29, 1991, that full-time magistrate's salary cannot be reduced even if the individual's hours are reduced.

The Honorable Michael T. Rose  
Page 3  
May 6, 1991

In your second question you asked whether the Governor may appoint an individual as magistrate to replace another individual whose term has expired and who is in holdover status without making appointments for the remaining magisterial positions.

Pursuant to Section 22-1-10 of the Code four year terms for magistrates in Berkeley County commenced May 1, 1991. A prior opinion of this Office dated March 6, 1990, stated:

... upon commencement of the terms for ... magistrates on May 1, ... the present magisterial positions should be considered technically vacant. Inasmuch as vacancies will exist in these offices, it is incumbent that the appointment and qualification of individuals for all authorized magisterial positions for the terms to commence on the effective date be finalized. In the event that all magisterial positions available are not properly filled by May 1, ... it would be necessary to provide for continuation of magisterial duties and responsibilities in the county. As a result, holding over by all magistrates presently serving would be authorized.

As to the situation you referenced, in my opinion, the Governor may appoint an individual as magistrate to replace another individual presently serving. The other magistrates not affected by the appointment would remain in holdover status.<sup>1/</sup> However to avoid any confusion, the Governor in making the appointment must designate clearly that the individual being appointed is replacing a particular magistrate. Otherwise there would be confusion as to the remaining positions. Moreover, when appointments are made at a later date for the remaining magisterial positions, it must be clearly stated that the individuals being appointed are to be considered as filling all positions deemed available so that there will not be any question among the holdovers whether or not they continue to serve.

---

<sup>1/</sup> I understand that Berkeley County presently has 16 magistrates, one full-time and 15 part-time. It is my understanding that pursuant to the ratio formula established by Section 22-8-40(B) the County would be entitled to 6.5 magistrates. Presently under the formula the County has 4.75 magistrates. Therefore the appointment would not exceed the number of magistrates to which the County is entitled.

The Honorable Michael T. Rose  
Page 4  
May 6, 1991

This would especially be the case if a reduced number of magistrates are being appointed.

These responses are first impressions by this Office as to how your questions might be interpreted. As this Office has repeatedly stated in responding to questions regarding Act No. 678 of 1988, legislative clarification would be advantageous in resolving questions resulting from this legislation.

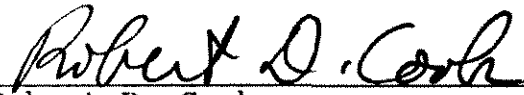
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions