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The State of South Carolina



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April 3, 1992

The Honorable Donald H. Holland
Senator, District No. 27
213 Gressette Building
Columbia, South Carolina 29202

Dear Senator Holland:

In a letter to this Office you indicated that in 1990 ten part-time magistrates were appointed for Chesterfield County. Two magisterial positions are now vacant due to resignations.

You indicated that pursuant to the ratio formula established by Section 22-8-40(B) of the Code, Chesterfield County is entitled to 3.5 equivalent full-time magistrates. You have asked

Does compensation in conjunction with hours worked determine the value of a part-time position ... (and) ... can magistrates be appointed to fill these vacancies and if so, or if not, is it not the prerogative and duty of the Chesterfield County Council under Act 678 of 1988 ... to make this determination.

You further stated "(i)t seems that full-time equivalence is directly related to the language found in Section 22-8-40(C) and (D) which read together establish the proportional value of a part-time position." You further indicated that all Chesterfield County magistrates are paid more than \$10,000 per year and work at least twenty hours per week. Therefore, I am inferring that you are questioning whether the amount of hours worked together with the compensation received become factors in determining the status of a part-time magistrate. For instance, if a full-time magistrate receives \$19,000.00 a year working forty hours a week, should a part-time magistrate working approximately twenty hours a week and receiving approximately \$10,000.00 a year

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in compensation be considered as filling two part-time positions, i.e., is he the equivalent of a 1/2 full-time magistrate?

Your question necessitates a review of Sections 22-8-10 through 22-8-40 of the Code. Pursuant to Section 22-8-10(3) a part-time magistrate is defined as "... a magistrate who regularly works less than forty hours a week performing official duties required of a magistrate as a judicial officer." Section 22-8-40(C) states "part-time magistrates are to be computed at a ratio of four part-time magistrates equals one full-time magistrate." Section 22-8-40 (D) provides that part-time magistrates are to receive a proportionate percentage of the salary received by a full-time magistrate, which by Section 22-8-10(2) is defined as a magistrate who regularly works forty hours a week as a magistrate. The percentage is computed by dividing by forty the number of hours the individual spends in his duties as magistrate.

Prior opinions of this Office have stated that part-time magistrates are to be computed at a ratio of four part-time magistrates equals one full-time magistrate and that part-time magistrates may work any period of time so long as it is less than forty hours a week. See: Atty. Gen. Opins. dated February 16, 1989, March 6, 1990 and June 19, 1990. Noting that part-time magistrates receive a proportionate percentage of the salary provided full-time magistrates, an opinion of this Office dated February 16, 1989 stated that part-time magistrates' salaries should be considered on an hourly wage basis. Other prior opinions of this Office dated March 6, 1990 and April 29, 1991 have recognized that pursuant to Section 22-8-40(A) of the Code, a county governing body designates magistrates as either full-time or part-time.

Prior opinions of this Office have recognized that the primary function of statutory construction or interpretation is to ascertain the intention of the legislature which does not require looking beyond the words of a statute when legislative intent appears on the face of the statute. See, e.g., Opin. Atty. Gen. dated August 17, 1991. See also: Wright v. Colleton County School District, 301 S.C. 282, 391 S.E.2d 564 (1990). Moreover, when a statute is clear and unambiguous, the terms of that statute must be given their literal meaning. Crown Cork and Seal Co., Inc. v. S.C. Tax Commission, 302 S.C. 140, 394 S.E.2d 315 (1990). In construing a statute, the words of that statute must be accorded their plain and ordinary meaning without resorting

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to subtle or forced construction to limit or expand a statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1985).

As to your question regarding whether compensation in conjunction with hours worked determines the value of a part-time position, based upon Section 22-8-40(C) which, again, states that part-time magistrates are to be computed at a ratio of four part-time magistrates equals one full-time position, I am unaware of any basis to conclude that compensation is a factor in determining the value of a part-time position. It has been our construction that the determination of whether a magistrate is full-time or part-time is based solely upon the number of hours worked and that if the number of hours worked is less than forty, that individual should be considered to be a part-time magistrate. Therefore, as to the situation in Chesterfield County which you indicated is entitled under the ratio formula to 3.5 full-time equivalent magistrates and where only 8 part-time magistrates currently serve, it is my construction that the County is entitled to the equivalent of one and one-half (1 1/2) full-time magistrates additionally. Such could be in the form for example of one (1) full-time and two (2) part-time magistrates or up to six (6) part-time magistrates.

As to your question regarding the responsibility of the Chesterfield County Council in this regard, as referenced, pursuant to Section 22-8-40 the county governing body determines the designation of magistrates as full-time or part-time. A prior opinion of this Office dated April 29, 1991 noted that

... it appears that the overall intent of the General Assembly by Act No. 678 was to shift authority regarding the determination of the number of magistrates to be appointed in the individual counties to the local governing body. 1/

1/ That opinion further stated that while the county governing body has the authority to determine the number of magistrates to be appointed, such authority should in no manner be construed as indicating any responsibility by the county in determining who is to be appointed. Pursuant to Article V, Section 26 of the State Constitution and Section 22-1-10 of the Code, the Governor with the advice and consent of the Senate is given authority to appoint magistrates.

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Therefore, the County Council would determine the actual number of magisterial positions, in accordance with the designation of full-time/part-time status, that are eligible for appointment.

If there are any further questions, please advise.

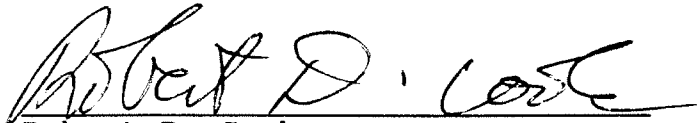
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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