

The State of South Carolina



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April 11, 1991

The Honorable Glenn G. Reese
Senator, District No. 11
510 Gressette Building
Columbia, South Carolina 29202

Dear Senator Reese:

In a letter to this Office you questioned the authority of the Spartanburg County Council to freeze the funding for magisterial positions. I interpret your question as asking whether the county can refuse to pay magisterial salaries.

In Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981) the State Supreme Court held that former Section 22-2-180 of the Code, insofar as the statute authorized the determination by individual counties of magisterial compensation, was unconstitutional as being in conflict with Article V of the State Constitution and its mandate of a unified judicial system, which includes the magistrates' courts. See: State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1979). In making such determination, the Court left the matter of such compensation to the General Assembly which was given the responsibility of setting a schedule of salaries for magistrates. In Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850 (1981), the Supreme Court determined

It is certainly competent for the General Assembly to mandate county funding of county agencies ... Likewise the General Assembly has the authority to direct counties to support with county funds the courts of the unified system.

277 S.C. at 74.

Following these decisions the General Assembly enacted comprehensive legislation, Act No. 678 of 1988, which dealt in part with

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the magistrate's court system in this State. According to the title to the Act, such legislation was an act

...

TO AMEND THE 1976 CODE BY ADDING CHAPTER 8 TO TITLE 22 SO AS TO PROVIDE FOR MAGISTRATES' COMPENSATION AND FOR THE FUNDING OF THE OPERATION OF THEIR OFFICES

These provisions are set forth in Sections 22-8-30 et seq. of the Code. Pursuant to Section 22-8-40 (B) a minimum base salary for magistrates is provided. A county's obligation to provide the compensation consistent with Douglas and Kramer, is specifically referenced in several provisions.

In addition to providing the salary schedule for magistrates, Section 22-8-40 in subsection (E) 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.

Subsection (G) states

Magistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary.

Additionally, subsections (J), (K) and (L) provide

No county may pay a magistrate lower than the base salary established for that county by the provisions of subsection (B) of this section. Nothing in this section may be interpreted as prohibiting a county from paying a magistrate more than the base salary established for that county ... Nothing contained in this section may be construed as prohibiting a county from paying in excess of the minimum base salaries provided for in this section. (emphasis added.)

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An additional reference to a county's obligation regarding a magistrate's compensation is Section 22-8-50 (B) which states in part

The county governing body of each county shall hear and determine contested cases arising within the county in connection with ... compensation of magistrates

Generally, where the terms of a statute are clear and unambiguous, there is no room for construction. Duke Power Co. v. S. C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987). Referencing the provisions set forth above, along with the decisions of the Supreme Court regarding county funding of the magistrates' courts, I am unaware of any basis for a county council to freeze funding for magisterial positions duly appointed.

If there is anything further, please advise.

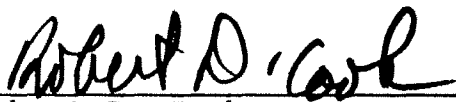
Sincerely,



Charles H. Richardson
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REVIEWED AND APPROVED BY:



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