

# The State of South Carolina



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April 29, 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. Can the salary of a current part time magistrate be cut upon that magistrate's being reappointed a magistrate for a four year term, in proportion to a reduction of that part time magistrate's hours? For example, if a Berkeley County magistrate currently is paid \$22,000 per year to work thirty hours per week, may that same magistrate be paid only \$11,000 per year to work fifteen hours per week, upon reappointment as a magistrate?

2. Can the salary of a current full time magistrate be cut upon that magistrate's being reappointed a magistrate for a four year term, in proportion to a reduction of that part time magistrate's hours? For example, if a Berkeley County magistrate currently is paid \$33,000 per year to work forty hours per week, may that same magistrate be paid only \$16,500 per year to work twenty hours per week, upon reappointment as a magistrate?

3. If the Berkeley County Council cannot cause either of the above to occur, may a magistrate upon his reappointment lawfully bind himself not to object to a salary reduction referenced above as a condition for his being reappointed as a magistrate. For example, if the

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Berkeley County Council has reduced a former forty hour per week magistrate position in Moncks Corner to only a twenty hour per week position in Moncks Corner and that magistrate had been receiving \$33,000 per year to fill that forty hour per week position, may that Moncks Corner magistrate agree to receive only \$16,500 per year to work in the newly created twenty hour per week position upon being reappointed a magistrate, rather than not be reappointed on the ground that it would be too expensive to pay that magistrate \$33,000 per year to work in only a twenty hour per week position.

In reviewing these questions, reference must be made to Section 22-8-40(I) of the Code which states

A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

As to your first question regarding the part-time magistrate, a prior opinion of this Office dated February 16, 1988 dealt with the question of whether a county is limited to establishing 10-hour work weeks for part-time magistrates or may it establish work weeks of any length up to 40 hours. The opinion concluded that the hours of work for part-time magistrates could vary.

That opinion also dealt with the question as to whether the compensation of a part-time magistrate could vary based upon the hours worked. The opinion stated:

... pursuant to Section 22-8-40(D) part-time magistrates are entitled to a proportionate percentage of the salary provided full-time magistrates ... (S)uch percentage is computed by dividing by forty the number of hours the part-time magistrate spends performing his duties ... (Citing an opinion of this Office dated December 22, 1988 the opinion further noted that) ... part-time magistrates are to be compensated only for the hours worked and are not to be compensated for the time spent "on call". Consistent with such, it appears that part-time magistrates' "salaries" should be considered on

an hourly wage basis and not as a fixed sum received regardless of the number of hours worked. Therefore, counties may compensate part-time magistrates for any extra hours worked but later reduce these hours thereby reducing their total compensation.

Consistent with this conclusion that a part-time magistrate's salary should be considered on an hourly wage basis, it appears that the compensation of a current part-time magistrate could be reduced in proportion to the reduction in the part-time magistrate's hours. There would not be a conflict with Section 22-8-40(I) assuming that the salary on an hourly basis is not being reduced.

You also asked whether a current full-time magistrate's salary could be reduced in a commensurate amount if the hours worked by the magistrate are reduced.

As referenced, Section 22-8-40(I) of the Code prohibits the reduction in the stated circumstances of the salary of a magistrate during his tenure in office. Moreover, tenure in office continues if the incumbent magistrate is reappointed. It is a rule of statutory construction that where a statute is clear and unambiguous, there is no room for construction and the terms of a statute must be given their literal meaning. Duke Power Co. v. S.C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987). Therefore, pursuant to Section 22-8-40(I), a magistrate's salary cannot be reduced during his term of office. Also, inasmuch as such provision indicates that tenure in office continues at the expiration of a magistrate's term if the magistrate is reappointed, a full-time magistrate's salary may not be reduced if the magistrate, who served in a full-time capacity, is reappointed. I am unaware of any provision for full-time magistrates similar to that referenced above for part-time magistrates relating to the computation of their salaries, i.e., "part-time magistrates are entitled to a proportionate percentage of the salary provided full-time magistrates", which would support a construction that full-time magistrates are paid on an hourly basis.

Pursuant to Section 22-8-40(A) of the Code, a county governing body is given the authority to designate magistrates as either full-time or part-time. Therefore, a county would be authorized to convert a magisterial position from a full-time position to a part-time position. However, due to the requirements of Section 22-8-40(I), I am unaware of any basis to reduce the magistrate's salary comparatively. Therefore, present statutory provisions do not appear to provide for the reduction of the salary of a full-time magistrate even if the individual's hours are reduced.

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You next asked whether a magistrate upon reappointment could lawfully bind himself not to object to a salary reduction as a condition of his being reappointed as a magistrate. This question would be particularly applicable to a situation where a full-time magistrate is reduced to part-time status upon being reappointed.

A prior opinion of this Office dated November 22, 1989, a copy of which is enclosed, dealt with the question of whether a part-time magistrate could work for less salary than the base salary established for that position. Reference was made to Section 22-8-40(J) of the Code which states

No county may pay a magistrate lower than the base salary established for that county by the provisions ... (of that act).

See also: Section 22-8-40(B) ("All magistrates in this State must be paid the base salary as determined ... (by that provision).") Reference was also made to the general rule that "... where the compensation of a public officer is established by law, he cannot accept less...." Furthermore, it was noted that in Salley v. McCoy, 182 S.C. 249, 189 S.E.2d 196 (1936) the State Supreme Court in adopting the lower court's degree recognized:

With practical uniformity the courts have held that a contract whereby a public officer agrees to accept some other compensation for his services than that provided by law, whether it be more or less, or whether the comparative value be uncertain, is against public policy and, therefore, void. I do not find that the question has been decided by our court, but the weight of authority from other jurisdictions is overwhelming and the public policy involved is plain.

Under our scheme of government it is for the Legislature to fix plaintiff's compensation by proper enactment. It must be supposed that its action in this regard will be for the public good. If plaintiff could be bound by a contract entered into in respect to his compensation, the authority of the Legislature could be overthrown by "a few strokes of the pen." If by contract the compensation of a public officer could be reduced, then by contract it would be increased.

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The opinion recognized that the General Assembly could, if it desired, expressly authorize such an agreed reduction. The opinion concluded

While the above general authority appears to indicate that a public official may not refuse to accept an established salary, there have been no recent decisions of the State Supreme Court commenting on the question. Therefore, this Office cannot advise that in every instance a public official would be prevented from waiving his salary. However, as to the narrow question of whether a magistrate could refuse a salary, in light of the provisions of Section 22-8-40, there is a basis for not authorizing such a decrease by a magistrate.

Therefore, as to the situation you referenced, a magistrate could agree not to object to a salary reduction as a condition of his being reappointed as a magistrate. Presumably, this agreement would be in the form of something roughly equivalent to a covenant not to sue. However, we must caution that, while the agreement would be presumed valid, based upon the foregoing authorities, a court could ultimately conclude that such agreement was not legally binding. Thus, you and other officials may want to consider these authorities in determining how to proceed with magisterial appointments.

If there is anything further, please advise.

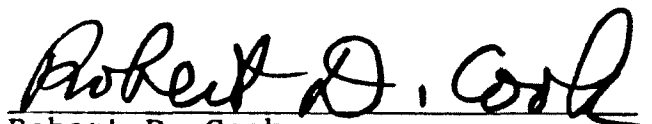
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosure

REVIEWED AND APPROVED BY:



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