

The State of South Carolina



Office of the Attorney General

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December 20, 1990

The Honorable Michael T. Rose
Senator, District No. 38
402 Old Trolley Road
Summerville, South Carolina 29483

Dear Senator Rose:

In a letter to this Office you questioned what authority exists to remove a magistrate before the expiration of his term of office for inefficiency or abuse or neglect in the performance of his duties.

I am enclosing a copy of a prior opinion of this Office, 1976 Op. Atty. Gen. No. 4244, which sets forth a summary of the authority of the Governor to suspend or remove certain judicial officers. As to magistrates, the opinion indicates the Governor

- (a) May remove, following hearing, for misconduct or persistent neglect of duty. (§ 1-3-240 of the Code);
- (b) May suspend for incapacity, misconduct or neglect of duty subject to approval of Senate on ultimate question of removal. (§ 22-1-30 of the Code);
- (c) May suspend upon indictment for any crime and remove upon conviction. (Section 8-1-100 of the Code);
- (d) May direct prosecution for misuse of public funds and suspend upon indictment and remove upon conviction. (S. C. Const. art. 6, § 8)
- (e) May suspend upon indictment for a crime involving moral turpitude and remove upon conviction. (S. C. Const. art. 6, §8.)

I am also enclosing a copy of an advice letter from this Office commenting on the question of inconsistency as to two other prior opinions of this Office, Ops. No. 2354 and 4358, copies of which are

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also enclosed, which dealt with the Governor's authority to suspend or remove judicial officers. The letter advised that Op. No. 4244 would probably control as to a judge of less than state-wide jurisdiction. I am also enclosing a copy of a recent Order of the Supreme Court referencing the suspension of a judge of less than state-wide jurisdiction as well as copies of other prior opinions of this Office dated October 25, 1960, March 28, 1960 and February 18, 1971 which relate to the authority of a Governor to suspend a magistrate from office.

You also asked whether there is any authority to require an individual to perform magisterial duties for a limited period of time on a trial basis, such as for a six month period, rather than be appointed for a full four year term as magistrate. You indicated this would provide an opportunity to review the magistrate's performance prior to being appointed for a full term.

Pursuant to Article V, Section 26 of the State Constitution

The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office....


Section 22-1-10(A) of the Code provides

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....

As set forth, both provisions authorize the appointment of magistrates to serve designated terms of office. Therefore, absent constitutional and statutory amendments, I am unaware of any basis to require an individual to perform magisterial duties on a trial basis.

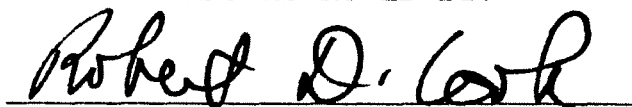
With kind regards, I am

Very truly yours,


Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:


Robert D. Cook
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