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Summary

The State of South Carolina



Office of the Attorney General

Opinion No 83-15
1/27

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February 22, 1985

The Honorable Thomas E. Huff
Member, House of Representatives
1843 Mountainside Drive
North Augusta, South Carolina 29841

Dear Representative Huff:

In a telephone conversation you indicated that the Aiken County Council is refusing to provide compensation for a particular magisterial office in Aiken County. You have questioned whether the Council has the authority to refuse to provide compensation for the particular position. 1/

Section 22-2-40, Code of Laws of South Carolina, 1976, as amended, states in part that:

"(t)he General Assembly shall provide for the number and location of magistrates in

1/ You indicated that you were particularly referencing the magisterial position presently being held by Magistrate B. E. Nichols who is retiring. According to my information, the individual being considered to replace Judge Nichols has not yet been confirmed by the State Senate. You have indicated that the County is refusing to fund the position after Judge Nichols retires.

Continuation Sheet Number 2
To: The Honorable Thomas E. Huff
February 22, 1985

each county." See also: Article V, Section 23 of the South Carolina Constitution. 2/

The authority of the General Assembly to establish the number of magistrates in each county has been recognized by this Office in several previous opinions. See Opinions dated May 7, 1981, April 14, 1980, December 16, 1977. Also, the South Carolina Supreme Court in its decisions in Young v. Sapp, 167 S.C. 364, 166 S.E.2d 354 (1932) and Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1937) recognized the authority of the General Assembly to create or abolish specific magisterial districts in each county.

Consistent with the authority of the General Assembly to establish the number of magistrates in each county, pursuant to Act No. 279 of 1971, the General Assembly established eight magisterial positions in Aiken County. 3/ Subsequently, eight magisterial "jury areas" were also established for Aiken County. See: Section 22-2-190(2), Code of Laws of South Carolina, 1976, as amended.

While eight magisterial positions for Aiken County have been established by the General Assembly, you have indicated that the Aiken County Council is refusing to presently fund one of

2/ Such statutory authorization is consistent with the provisions of Section 22-1-10, Code of Laws of South Carolina, 1976, which state that:

"(t)he number of magistrates to be appointed for each county and their territorial jurisdiction shall be as prescribed by law prior to March 2, 1897 for trial justices in the respective counties of the State, except as herein otherwise provided."

3/ Pursuant to Act No. 79 of 1977, a "special magistrate" to serve at nighttime and on weekends was authorized. Such position was in addition to the other magisterial positions previously established.

Continuation Sheet Number 3
To: The Honorable Thomas E. Huff
February 22, 1985

the positions. In the opinion of this Office, such refusal is in conflict with the provisions of Section 22-2-180, Code of laws of South Carolina, 1976, as amended, which states:

"(t)he magistrates of the several counties shall receive such compensation for performance of their duties as may be fixed by the governing body of the county, which shall not be diminished during their terms of office, and such compensation shall not be measured or affected by the fees and costs received and recovered by such officers...."
See also: Section 8-21-1000, Code of Laws of South Carolina, 1976, as amended ("all magistrates shall receive salaries in lieu of all fees and costs in civil or criminal actions or proceedings...."); Section 4-1-130, Code of Laws of South Carolina, 1976 ("each county shall pay ... (6) Fees or salaries of magistrates and constables....")

The South Carolina Supreme Court in Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981) was faced with the question of the constitutionality of Section 22-2-180, supra. In its decision, the Court concluded that such provision was in violation of Article V, Section 1 and Article VIII, Section 14 (4 and 6) of the South Carolina Constitution insofar as such statute provided that the compensation of magistrates could be determined by the county governing bodies. In determining that the provision was unconstitutional, the Court left the matter of magisterial compensation to the General Assembly which was given the duty of developing a schedule of salaries for magistrates. The Court stated that "(w)hile compensation may be provided by the several counties, such must be in keeping with classifications established by the General Assembly." 282 S.E.2d at 606.

However, while the Court determined that Section 22-2-180, supra, violated certain State constitutional provisions, counties were not enjoined from complying with its provisions until the General Assembly repealed such provision and adopted a uniform statewide magisterial salary schedule. Inasmuch as the General Assembly has not yet enacted such a schedule, Section 22-2-180, supra, is still effective.

Continuation Sheet Number 4
To: The Honorable Thomas E. Huff
February 22, 1985

In Kramer v. County Council for Dorchester County, 277 S.C. 84, 282 S.E.2d 850 (1981), the State Supreme Court recognized that:

"(i)t is certainly competent for the General Assembly to mandate county funding of county agencies, as in Section 4-1-80, Code. Likewise, the General Assembly has the authority to direct counties to support with county funds the courts of the unified system ... (citing State ex rel. McLeod v. Rhodes, Order filed May 6, 1980).

Consistent with such, in a previous opinion of this Office, Opinion No. 80-85 dated August 5, 1980, it was concluded that:

"a county cannot arbitrarily fail to fund the office of Master-in-equity for that county...."

Also in Kramer, the State Supreme Court, while holding that the statute providing for compensation for a master-in-equity was unconstitutional insofar as it empowered individual counties to determine the amount of compensation, did direct that the county involved in the litigation "pay reasonable compensation" to its master-in-equity until the General Assembly could provide a salary scale as directed by the Court.

Generally, it is recognized that:

(w)here provision is made for compensation for a public office, the right to the compensation is an incident to the office or to the legal right or title thereto,
67 C.J.S. Officers, Section 219 p. 706; see also: 4 McQuillin Municipal Corporations, Section 12.174(b) p. 9.

Therefore, it is clear that inasmuch as the General Assembly has repeatedly provided that magistrates are to receive salaries, Aiken County cannot refuse to provide compensation for the individual who holds a magisterial office in Aiken County which has been established by the General Assembly. Moreover, since magistrates have traditionally received some form of compensation, the fact that in this instance the County proposes to eliminate such compensation entirely could be construed as

Continuation Sheet Number 5
To: The Honorable Thomas E. Huff
February 22, 1985

changing the number of magistrates in the County, a matter which only the General Assembly is empowered to do. Supra at 1-2.

If there are any questions, please advise.

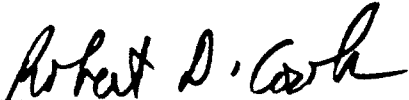
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:



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