

1984 WL 249866 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 24, 1984

\*1 Honorable M. E. McDonald

Senator

District No. 1

402 Gressette Building

Columbia, SC 29202

Honorable T. Ed. Garrison

Senator

District No. 1

412 Gressette Building

Columbia, SC 29202

Dear Senators:

Anderson County Magistrate Lawrence Whitfield has indicated to this Office that consideration is being given to the appointment of two individuals as ministerial magistrates for Anderson County. He indicated in a telephone conversation that such ministerial magistrates would be in addition to the eleven magistrates presently serving in Anderson County. According to my research, eleven magisterial positions for Anderson County were provided by Act No. 795 of 1964. Referencing such, he has questioned whether legislation is necessary to provide for the additional positions.

Pursuant to [Section 22-2-40, Code of Laws of South Carolina](#), 1976, as amended, the General Assembly shall provide for the number of magistrates in each county. See also: [Article V, Section 23 of the South Carolina Constitution](#). Moreover, pursuant to [Section 22-2-40](#), in each county a magistrate or magistrates may be designated by the Governor, with the advice and consent of the Senate, as ministerial magistrates. Such ministerial magistrates would have the responsibilities as outlined in such Section.

As to your situation where consideration is being given to the appointment of two individuals as ministerial magistrates who would serve in addition to the eleven individuals serving as magistrates in Anderson County presently, legislation would have to be enacted by the General Assembly increasing the number of magistrates in Anderson County to thirteen. Thereafter, the Governor, with the advice and consent of the Senate, could designate two of the magistrates as ministerial magistrates upon their appointment. Of course, any local legislation would have to be consistent with [Section 22-2-40](#) and conform to the requirements of [Article V](#) and [Article III, Section 34](#). See, e.g., [State ex rel. McLeod v. Crowe](#), 272 S.C. 41, 249 S.E.2d 772 (1978). See also, [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975).

If there are any other questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson

Assistant Attorney General

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