

1980 WL 120650 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 4, 1980

*1 Honorable William E. Knotts
South Carolina State Senator
Suite 506
Marion Gressette Building
Columbia, South Carolina

Dear Senator Knotts:

You have requested an opinion from this Office concerning whether or not retired Magistrate Wise can be appointed as a special 'night magistrate' in Aiken County. You indicated that Mr. Wise was 72 years of age on May 27, 1979 and retired from his former position as magistrate that month.

Previous opinions of this Office, copies of which are enclosed, have indicated that it is mandatory that a magistrate retire by the end of the fiscal year of his 72nd birthday. These opinions referenced the section now codified as [Section 9-1-1530, Code of Laws of South Carolina](#), 1976, as amended. It appears that since this question was addressed by this Office in these opinions the above code section has been amended. A 1979 amendment added teachers to the provisions concerning retirement and a 1978 amendment exempted persons employed part-time in the State Court System from the provisions of the section. This Office recognizes that the position of 'night magistrate', or 'ministerial magistrate' as referenced by [Section 22-2-40, Code of Laws of South Carolina](#), 1976, as amended, may be considered a part-time position.

While the South Carolina Supreme Court has held in [State of South Carolina ex. rel. McLeod v. Crowe](#), 249 S.E.2d 772 (1978), that the magistrate's court is a part of this State's uniform judicial system, this Office is of the opinion that magistrates would not be covered by the 1978 amendment concerning part-time State Court System employees. As you are aware, magistrates have typically been considered county officers and are in fact paid by the various counties of this State, as provided by Section 22-2-180, Code of Laws of South Carolina, 1976, as amended. Therefore, in specific response to your inquiry, it is the opinion of this Office that retired Magistrate Wise may not be appointed as a 'night magistrate' in Aiken County inasmuch as he has reached the mandatory age of retirement of 72 years of age.

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

Sincerely,

Charles H. Richardson
Assistant Attorney General

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