

1980 WL 121168 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 14, 1980

*1 Judge Ray B. Edenfield
Chief Judge for Administrative Purposes
P. O. Box 388
Allendale, South Carolina 29810

Dear Judge Edenfield:

This is in response to our recent conversation in which you requested an opinion on the following questions: (1) Is a magistrate's resignation effective upon tender or must he continue to serve until his successor is appointed and qualified? (2) May a magistrate's salary be reduced during his term of office? (3) What authority determines the number of magistrates in a given county?

With regard to your first question, please refer to [Section 22-1-10 of the 1976 Code](#) of Laws. [Section 22-1-10](#) provides that magistrates ' . . . shall hold their office for a term of two years and until their successors are appointed and qualified.' A 1970 Opinion of the Attorney General, No. 2994, p. 273, held that a magistrate who reaches the mandatory retirement age must continue in office until his successor is appointed and qualified. This Opinion cited [Rogers vs. Coleman, 245 S.C. 32, 138 S.E.2d 415 \(1964\)](#), which held that the attempted resignation by certain county elections commissioners was not effective and their tenure in office along with their duties and responsibilities continued until their successors were appointed and qualified. The South Carolina Supreme Court in this case held that, 'This is in accord with the general rule that a public officer does not cease to be such even when his resignation is accepted, but continues in office until his successor is qualified where the statute or Constitution so provides.' [Section 22-1-10](#) specifically provides that the magistrate shall continue in office until his successor is appointed and qualified.

With regard to question number two, please refer to Section 19 of Act 164 of 1979 which provides that, . . . the 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 . . . (emphasis added)

With regard to question number three, please refer to Section 5 of Act 164 of 1979 which provides that, ' . . . the General Assembly shall provide for the number and location of magistrates in each county.' This Section would preclude any other individual or body from reducing or adding to the number of magistrates in any given county in contradiction to a statute passed by the General Assembly.

If there is anything further, please contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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