

1977 S.C. Op. Atty. Gen. 314 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-385, 1977 WL 24722

Office of the Attorney General

State of South Carolina

Opinion No. 77-385

December 7, 1977

*1 TO: Neal Forney
Assistant Director
S. C. Court Administration

QUESTIONS PRESENTED:

1. What is the meaning of the term ‘incapacitated’ as used in Section 22–3–910, Code of Laws of South Carolina, 1976?
2. Should a magistrate who has separate and exclusive territorial jurisdiction be permitted to declare himself incapacitated pursuant to the provisions of Section 22–3–910, supra?
3. If a magistrate declares himself incapacitated as described in Question 2, is a situation created where the magistrate may be subject to the provisions of Section 22–1–30, Code of Laws of South Carolina, 1976?

AUTHORITIES:

Section 22–3–910, Code of Laws of South Carolina, 1976;

42 C.J.S. Incapacitate, p. 497;

Section 22–1–30, Code of Laws of South Carolina, 1976.

DISCUSSION:

Section 22–3–910, Code of Laws of South Carolina, 1976, states that:

‘In the event a magistrate who has separate and exclusive territorial jurisdiction becomes incapacitated, any magistrate of an adjoining magisterial district within the same county may assume the jurisdiction of the incapacitated magistrate during such time as the incapacity continues.’

As to the question concerning the definition of the word ‘incapacitated’ as used in Section 22–3–910, supra, please be advised that there has been no determination by the courts as to the particular definition as used in this statute. The term generally implies that an individual is incapably, inable, or incompetent to perform in some capacity. ‘Incapacitated’ has been defined to mean a ‘. . . physical or mental disability, or disability resulting from . . . (an) . . . infirmity or disease, which renders one incapable of earning his own livelihood . . . The term has been held interchangeable with ‘incompetent’. 42 C.J.S. Incapacitate, p. 497.

In the opinion of this Office, the term ‘incapacitated’ as used in Section 22–3–910, supra, shall be construed to refer to those circumstances where a magistrate is temporarily physically or, if the incapacity is of such a nature, mentally unable to perform the duties of his office.

While incapacitated may in certain situations also include legal disabilities, Section 22–3–910, supra, probably would not be concerned with such in light of the fact that any legal disabilities preventing one from holding an office would not in most situations be of such a nature as to only temporarily keep someone from holding office. Therefore, Section 22–3–910, supra, should be construed to refer to only those situations permitting a determination of the physical or mental incapacity of a particular magistrate to act.

Section 22–1–30, Code of Laws of South Carolina, 1976, indicates that ‘. . . magistrates may be suspended by the Governor for incapacity, misconduct, or neglect of duty.’ Upon suspending a magistrate, the Governor must report the suspension, with the cause thereof, to the Senate at its next session for approval or disapproval. This would appear to present a somewhat more critical situation than that described in Section 22–3–910, supra. Also, Section 22–3–910, supra, is a codified 1973 Act while Section 22–1–30, supra, originated as an 1897 Act of the Legislature. Furthermore, Section 22–3–910, supra, refers only to those magistrates with separate and exclusive territorial jurisdiction. Thus, it would seem to be indicated that the above-referenced code sections note different provisions for handling varying situations.

*2 As to the question of whether or not a magistrate who has separate and exclusive territorial jurisdiction should be permitted to declare himself incapacitated within the provisions of Section 22–3–910, supra, it would appear that as to any physical disabilities of a temporary nature, such a voluntary declaration of incapacity should be permitted. However, it would not seem that as to any mental disability, such a voluntary declaration would be proper due to the disability being of such a nature.

As stated, such incapacity of a magistrate within Section 22–3–910, supra, should be viewed as temporary. Any physical or mental incapacity of a prolonged nature could possibly be construed to indicate a situation whereby the magistrate could be suspended by the Governor pursuant to Section 22–1–30, supra. The nature and circumstances of any disability and the ability of another magistrate to adequately assume the jurisdiction of the incapacitated magistrate may be determining factors in evaluating whether a particular magistrate could be suspended by the Governor under Section 22–1–30, supra.

CONCLUSION:

The term ‘incapacitated’ as used in Section 22–3–910, supra, may be construed to refer to circumstances where a magistrate is physically or mentally unable to perform the duties of his office. Section 22–3–910, supra, would appear to provide for a magistrate who has separate and exclusive territorial jurisdiction to declare himself temporarily physically incapacitated and thus allow a magistrate in an adjoining magisterial district within the same county to assume the jurisdiction of the matters before him. Based on the background and wording of Sections 22–1–30, supra, and 22–3–910, supra, it would appear that Section 22–3–910, supra, does provide for circumstances differing from those provided for in Section 22–1–30 which authorizes the Governor to suspend magistrates for incapacity, misconduct, or neglect of duty. As to any mental condition which would incapacitate a particular magistrate, it would appear that under Section 22–3–910, supra, another magistrate could assume jurisdiction as above described, if it was determined by proper authority that the magistrate was temporarily unable to hold office. While the jurisdiction of a magistrate with separate and exclusive territorial jurisdiction who is temporarily incapacitated either physically or mentally may be transferred to another magistrate of an adjoining district within the same county, quite possible any such incapacity of a prolonged nature could be determined to indicate a situation whereby the magistrate could be suspended by the Governor pursuant to Section 22–1–30.

Charles H. Richardson
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