

1978 WL 35300 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 3, 1978

*1 Charles Porter, Esquire
Richland County Attorney
Post Office Box 4069
Columbia, SC 29240

Dear Mr. Porter:

You have recently asked the opinion of this Office concerning the mandatory retirement age of magistrates in Richland County. More specifically, your questions concerning these particular magistrates were as follows:

1. Is there a mandatory retirement age for magistrates, and if so, at what age?
2. Can a magistrate who is appointed prior to a mandatory retirement age continue to serve in a de facto capacity and 'until his successor is appointed and qualified'?
3. Can a magistrate be appointed to office after his mandatory retirement age?

As to your first question concerning the mandatory retirement age, [Section 9-1-1530, Code of Laws of South Carolina](#), 1976, provides in part that any 'employee' who has reached the age of seventy shall be retired, with certain exceptions being provided whereby he may be allowed to continue for certain periods with the approval of his employer. However, it is further provided that

It shall be mandatory for any employee or teacher whether or not appointed and regardless of whether or not a member of the South Carolina Retirement System to retire no later than the end of the fiscal year in which he reaches his seventy-second birthday.

In a previous opinion, 1970 Ops. Att'y. Gen. No. 2994, p. 273, a copy of which is enclosed, this Office indicated that 'the retirement date of a magistrate is on the end of the fiscal year of the year he reaches retirement age.' In the situation prompting the opinion, the particular magistrate involved reached the age of seventy-two in November, 1971, and this Office indicated that he would be required to retire no later than the end of that particular fiscal year. Another opinion, 1970 Ops. Att'y. Gen. No. 2829, p. 46, a copy of which is also enclosed, also stated that the above code section requires mandatory retirement by a magistrate by the end of the fiscal year of his seventy-second birthday. This Office has reviewed these particular opinions and by this letter reaffirms their holdings.

Furthermore, there do not appear to be any constitutional problems relevant to this mandatory retirement provision. Admittedly, magistrates are constitutional officers since their office is provided for in [Article V, Section 23 of the South Carolina Constitution](#). However, this particular section of the Constitution does not define the term of office for a magistrate but instead states that 'the General Assembly shall provide for their terms of office and their civil and criminal jurisdiction.' Four-year terms of office for Richland County magistrates were established by the General Assembly by Act No. 123, 1963 Acts and Joint Resolutions. This Office is of the opinion that a further legislative enactment mandating retirement at age seventy-two as expressed by [Section 9-1-1530, supra](#), above would also be relevant to the office of magistrate. Therefore, in response to your question, it is the opinion of this Office that it would be mandatory that a Richland County magistrate retire no later than the end of the fiscal year in which he reaches his seventy-second birthday.

*2 As to your question concerning whether a magistrate appointed prior to a mandatory retirement age may continue to serve in a de facto capacity and ‘until his successor is appointed and qualified,’ the above-referenced Opinion No. 2994, supra, indicated that based on Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415 (1964), a magistrate who reaches the mandatory retirement age must continue in office until his successor is appointed and qualifies. As stated in this opinion, the provision of law under which a magistrate is appointed, Section 22-1-10, Code of Laws of South Carolina, 1976, is identical to the provision of law construed in Rogers, supra. In that particular case, the South Carolina Supreme Court held that the attempted resignation by certain county election commissioners was not effective and their tenure in office along with their duties and responsibilities continued until their successors qualified.

As to your final question of whether a magistrate may be appointed to office after his mandatory retirement age, it would appear that based upon the above discussion indicating mandatory retirement at age seventy-two, it would be improper to appoint someone over age seventy-two to a magisterial office.

If you have any further questions, do not hesitate to contact me.

With best regards, I am
Very truly yours,

Charles H. Richardson
Assistant Attorney General

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