

1974 WL 27733 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 30, 1974

*1 Mr. Pelix L. Finley, Jr.
Attorney for Pickens County
Pickens, South Carolina 29671

Dear Felix:

Thank you for your letter of April 5, 1974, to which I have just now had an opportunity to respond.

Your inquiry deals with the effective date for the payment of salary at an increased amount as provided by Act No. R-984, approved March 12, 1974, for the Judge of the Pickens Civil and Criminal Court. As noted in your letter, a predecessor Act established that Court and provided for the annual compensation of the Judge to be at an amount not less than forty per cent of the amount paid to the circuit judges of this State (Act No. R-1387, approved May 16, 1972). Act No. R-984, approved on March 12, 1974, provides that the term of the Judge should commence on January 1, 1973, and extend through December 31, 1976, and that his salary should be fixed at an amount 'not less than ninety per cent of the amount paid to the circuit judges of this State.' It is my opinion that the latter Act controls as of its effective date and that retroactive payment of the amount of increase provided since March 12, 1974, should be made in compliance with the provisions of the law.

The fact that such increase in salary is made during the term of the Judge does not, in my opinion, affect legal considerations of this matter. There is no constitutional prohibition against the alteration of the salary of the Judge during his term of office; instead, the office is entirely subject to legislative will.

In my opinion, such retroactive payment will not conflict with Article III, Section 30, of the Constitution of South Carolina, which prohibits the General Assembly from granting retroactive pay increases. The payment involved was prospectively made by the General Assembly in accordance with the terms of the Act; noncompliance with the terms of the Act does bring the application of this constitutional provision into play, and retroactive payment, which I think is authorized and required, is warranted merely to insure adherence to prior legislative direction.

While the compensation is paid by an annual salary, it is my opinion that the annual salary must pro rata be fixed as of the effective date of the Act in order to secure compliance with the terms of the statute. For a portion of the fiscal year the Judge was entitled to receive an annual salary based upon forty per cent of a circuit judge's compensation, but for the remainder of a fiscal year, his annual compensation was fixed at a higher amount. Pro rata allocation is therefore a means of full compliance with the law and, in my opinion, this is the procedure which should be followed.

The same conclusions are applicable also, in my opinion, to the Assistant Solicitor, whose salary by the last Act was fixed at not less than ninety per cent of the amount paid to the Circuit Solicitor.

Very truly yours,

Daniel R. McLeod
Attorney General

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