

March 2, 2007

G. P. Callison, Jr., Esquire
McCormick County Attorney
Post Office Box 3208
Greenwood, South Carolina 29648-3208

Dear Mr. Callison:

In a letter to this office you questioned whether or not a magistrate for McCormick County should be paid the same cost of living increase which was given to state employees last year. Referencing such you have asked two questions:

1. Is a McCormick County magistrate, who is paid more than the base salary, entitled to the same cost-of-living increase provided in the State annual appropriations act which for 2005-2006 was four (4%) per cent?
2. Is there any requirement that magistrates receive the cost of living increase provided in the state appropriations act?

In your letter you noted a prior opinion of this office dated December 22, 1988 which referenced Act No. 678 of 1988 and which provided for a cost of living increases for magistrates. Such legislation enacted a statute, S.C. Code Ann. § 22-8-40, providing for magisterial salaries based upon population size of the various counties.¹ Included in the Act was a provision codified as S.C. Code Ann. § 22-8-40 (E) which stated:

A cost of living increase must be paid...(magistrates)...by the county in the amount provided classified state employees in the annual state general appropriations act of the previous fiscal year. The base salaries provided for in this Part must be adjusted

¹For instance, "...for those counties with a population of two hundred thousand and above,...the base salary is twenty-nine thousand dollars;...for those counties with a population of at least one hundred fifty thousand but not more than one hundred ninety-nine thousand, nine hundred ninety-nine,...the base salary is twenty-seven thousand dollars....

annually based on the percentage amount of the cost of living increase paid to classified state employees in the annual state general appropriations act of the previous fiscal year.

The 1988 opinion concluded that the amount of the cost of living increase for state employees effective July 1, 1988 was four (4%) per cent. Consistent with the referenced statutory provision that magistrates receive an increase in the amount paid state employees in the “previous fiscal year”, the opinion concluded that magistrates would have been entitled to a four per cent salary increase effective July 1, 1989.

Based upon my review, Section 22-8-40 remained in the Code without change until the enactment of Act No. 226 of 2000. By that Act, Section 22-8-40 was amended to provide a new salary schedule for magistrates. Pursuant to subsection (2) of such provision, a base salary for magistrates was provided making the salaries for magistrates in the various counties a percentage of a circuit judge’s salary for the state’s previous fiscal year. For instance, by the provision codified as Section 22-8-40(B)(2),

- (a) for those counties with a population of one hundred fifty thousand and above,...the base salary is fifty-five percent of a circuit judge’s salary for the state’s previous fiscal year;
- (b) for those counties with a population of at least fifty thousand but not more than one hundred forty-nine thousand, nine hundred ninety-nine,...the base salary is forty-five percent of a circuit judge’s salary for the state’s previous fiscal year;
- (c) for those counties with a population of less than fifty thousand,...the base salary is thirty-five percent of a circuit court judge’s salary for the state’s previous fiscal year.

These provisions were effective July 1, 2000.² You indicated that pursuant to such provision, the

²By comparison, another provision, S.C. Code Ann. § 8-21-765 provides for the salary of probate judges. Such salary is also based upon population size. For instance, pursuant to subsection (A)(1), for those counties with a population of 200,000 and above, the base salary is \$59,000.00. Section 8-21-765 also provides that

A cost of living increase must be paid by the county in the amount provided classified state employees in the annual state general appropriations act of the previous fiscal year. The base salaries provided for in this Part must be adjusted annually based on the percentage amount of the cost of living increase paid to classified state employees in the annual state general appropriations act of the previous fiscal year.

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base salary for a McCormick County magistrate is 35% of a circuit court judge's salary.

Other provisions of amended Section 22-8-40 included such matters as salary supplements for chief magistrates and allowance for magistrates of the same perquisites as other county employees of similar position and salary. Also included was a proviso stating that "[n]othing in this section may be interpreted as prohibiting a county from paying a magistrate more than the salary established for the county or from paying a magistrate a merit raise in addition to the salary established for that county." Absent was any provision providing for a cost of living salary increase based upon the amount paid state employees in the previous fiscal year.

In your first question you asked whether a McCormick County magistrate, who is paid more than the base salary, is entitled to the same cost-of-living increase provided in the State annual appropriations act which for 2005-2006 was four (4%) per cent? Section 63.38 of Act No. 115 of 2005, the 2005-2006 appropriations act, provided a four per cent cost of living increase for all classified State employees.

Also included in Section 63.38 of Act No. 115 of 2005 was a provision stating that "[e]ffective on the first pay date that occurs on or after July 1 of the current fiscal year, the Chief Justice and other judicial officers shall receive an annualized base pay increase of 4%."³ Therefore, effective July 1, 2005, a circuit court judge's salary was increased 4%. As a result of the provision in amended Section 22-8-40(B)(2) that a magistrate make a percentage of a circuit judge's salary for the previous fiscal year, it appears that effective July 1, 2006, a magistrate would have also received a pay increase equal to 4%.

In your letter you indicated that the particular McCormick County magistrate is already being paid more than the base salary. You particularly questioned whether that magistrate, who is paid more than the base salary, would be entitled to the same cost-of-living increase provided in the State annual appropriations act for classified state employees which for 2005-2006 was four (4%) per cent. It appears that he would not be. Again, there is no current effective statute tying magisterial salary increases to cost of living increases provided state employees. Consistent with Section 22-8-40(a)(2), a McCormick County magistrate is entitled to a base salary of 35% of a circuit judge's salary for the

²(...continued)

Therefore, the provision of a cost of living raise based upon the amount paid to classified state employees was retained for probate judges.

³Pursuant to a provision in Act No. 397 of 2006, the 2006-2007 Appropriations Act, Section 63.32 (6), "[e]ffective on the first pay date that occurs on or after July 1 of the current fiscal year, the Chief Justice and other judicial officers shall receive an annualized base pay increase of 3%." Therefore, judicial officers, including circuit court judges received a 3% pay increase for the referenced fiscal year.

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previous fiscal year. However, another provision of Section 22-8-40, subsection J, states

A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office, and must be paid the same percentage annual increase in salary as other magistrates. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

Therefore, a magistrate receiving a salary greater than provided for his position pursuant to Section 22-8-40 “must be paid the same percentage annual increase in salary as other magistrates.” Consistent with such, in the opinion of this office, that magistrate would also receive the same increase paid to other magistrates, i.e., the pay increase tied to a circuit judge’s salary. Of course, as further stated in Section 22-8-40, nothing prohibits a county from paying a magistrate more than the salary established for that county or from paying a magistrate a merit raise in addition to the salary established for that county.

Therefore, in answer to your specific question, a McCormick County magistrate who is paid more than the base salary of a circuit court judge is not entitled to the same cost of living increase provided for classified state employees which in the 2005-2006 appropriations act was 4%. However, that magistrate would receive the same percentage increase paid to other magistrates tied to the salary increase provided circuit court judges.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General