



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 21, 1995

George A. Markert, Director
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

RE: Informal Opinion

Dear Mr. Markert:

By your letter of March 15, 1995, you have sought an opinion regarding the interpretation of the statutory provisions relating to salary increases for Probate Judges and Magistrates. Act No. 678 of 1988 established a salary schedule for Probate Judges, Magistrates, and Masters-in-Equity. The legislation requires that each county adjust annually the base salaries of Probate Judges and Magistrates based on the percentage amount of the cost of living increase paid to classified state employees in the annual state appropriation act of the previous fiscal year. The relevant appropriation act provision from last fiscal year does not specifically address cost of living increases for classified state employees, but does contemplate some increases in pay, including a general increase, and graduated increases for compression relief. The issue is thus how to implement the increases for Probate Judges and Magistrates based on the provisions of the appropriations act.

Statutory Provisions

Probate Judges are to receive salaries for the performance of their duties. S.C. Code Ann. §8-21-760 (1993 Cum. Supp.). A salary schedule is established in §8-21-765, based on the population of the specific county. The final paragraph of §8-21-765 provides:

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.

Similarly, Magistrates must also be paid salaries. §22-8-30. A salary schedule based on the population of the county is established in §22-8-40 (B). Section 22-8-40 (E) further provides as to salary increases:

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.

1994-1995 Appropriations Act

Proviso 17G.25 of Act No. 497 of 1994, the 1994-1995 annual appropriations act, provides for a pay increase for classified state employees. In part A, with respect to classified state employees, is the following:

1. Effective on the first pay date which occurs on or after July 1 of the current fiscal year, the compensation of all classified employees shall be increased by 2%. This increase shall not increase the minimum of the pay grade.

2. In addition, effective on the first pay date which occurs on or after July 1 of the current fiscal year, an average 1.06% one-time base pay increase for compression relief shall be awarded to all classified employees with permanent status in the following percentage amounts:

(a) Employees with less than one year of service in their current job or grade as of July 1, 1994 will receive a 0.5% increase.

(b) Employees with at least one and less than three years of service in their current job or grade as of July 1, 1994 will receive a 1.0% increase.

(c) Employees with at least three and less than five years of service in their current job or grade as of July 1, 1994 will receive a 1.25% increase.

(d) Employees with five or more years of service in their current job or grade as of July 1, 1994 will receive a 1.5% increase.

(e) Such increases shall be limited to the maximum of an employee's existing salary range.

(f) Employees in trainee or probationary status as of July 1, 1994 will not be eligible for this portion of the pay increase.

(g) Employees must also have received at least a "meets" performance rating on their most recent performance evaluation to be eligible for this portion of the pay increase.

3. The Budget and Control Board shall distribute the funds appropriated for merit increments so as to provide funds for an average 1.3% merit increment increase for classified employees. The effective date of this increase is on the first pay date on or after October 1, of the current fiscal year. The amount of the merit increment for each employee shall be based on the most recent Employee Performance Management System (EPMS) evaluation and shall be determined based on a plan established by the agency director. Employees in trainee or probationary status as of October 1, 1994 will not be eligible for this portion of the pay increase.

....

An analysis of the foregoing indicates that during the fiscal year 1994-1995, classified state employees had the potential to receive three types of increments in pay: merit, compression relief, and an overall increase applicable to all classified employees. The issue to be decided is which of these increments would be considered a "cost of living" type increase, the percentage of which would also be applicable to Probate Judges and Magistrates.

Discussion

A review of the appropriations acts adopted by the General Assembly from 1988 to the present indicates that apparently the General Assembly has not called the increases in pay for classified state employees "cost of living" increases. Instead, such pay increases are usually referred to in terms of base pay increases. See, for examples, Act No. 658 of 1988, Part I, proviso 16.36 (referring to base pay, compensation of classified state employees increased by 4% effective the first pay date on or after July 1, 1988); Act No. 189 of 1989, Part I, proviso 14.33 (compensation of classified state employees increased by the amounts and at the times specified therein); Act No. 612 of 1990, Part I, proviso 14.33 (compensation of classified state employees increased by 2.5% effective the first pay date on or after September 1 of the current fiscal year);¹ Act No. 501 of 1992, Part I, provisos 14K.6 (increased the compensation of classified state employees by 2% effective the first pay date on or after October 1 of the current fiscal year) and 14K.13

¹Act No. 171 of 1991 apparently did not contain a proviso as to increases in compensation of classified state employees.

George A. Markert, Director
Page 4
April 21, 1995

(provided for bonus payments); Act No. 164 of 1993, Part I, proviso 17K.33 (provided for bonus payments as specified); and Act No. 497 of 1994, Part I, proviso 17G.25, supra. It is generally recognized or acknowledged that, although not specifically called "cost of living" increases, the across-the-board pay increases which apply to all classified state employees have been for the purpose of adjusting salaries to meet the rising cost of living. I am of the opinion, therefore, that the 2% increase in the compensation of classified state employees would be considered a cost of living increase and therefore applicable to the increase in salaries of the Probate Judges and Magistrates.

The second type of increment to the compensation of classified state employees is termed "compression relief." I have learned from personnel at the Division of Human Resources of the Budget and Control Board that the purpose of pay increases for "compression relief" was to create more of a "bell curve," statistically speaking, in the salaries of classified state employees. Due to the manner in which compensation has been increased over the last several years, it was possible that a person who had been employed in a specific classification for several years could have the same salary as one who had been hired recently. By affording "compression relief," the General Assembly spread the employees out into various salary levels within the pay grade, rather than having all employees regardless of hire date at the same (most probably bottom) level of the pay grade. Clearly, this type of increase was to achieve a purpose other than a cost of living adjustment and most probably would not be applicable to Probate Judges and Magistrates.²

The final type of increment to the compensation of classified state employees is of a merit increase, the amount being based on the most recent Employee Performance Management System (EPMS) evaluation and distributed within the agency according to a plan established by the agency director. Clearly, the purpose of this type of increase would be to reward meritorious employment rather than to adjust for the rising cost of living. It is most probable that this type of increase would not be applicable to Probate Judges and Magistrates.

²The language within the pertinent part of proviso 17G.25 also makes it doubtful that such would apply to Probate Judges and Magistrates, as there are references therein to trainee or probationary status, neither of which would apply to Probate Judges or Magistrates. Moreover, Probate Judges and Magistrates do not undergo performance evaluations.

George A. Markert, Director
Page 5
April 21, 1995

In conclusion, I am of the opinion that the base salaries of the Probate Judges and Magistrates would be adjusted for fiscal year 1995-1996 according to the percentage specified in part 1 of proviso 17G.25 of the 1994-1995 appropriations act, Act No. 497.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General