



ALAN WILSON
ATTORNEY GENERAL

December 10, 2013

Lisa R. Claxton, Esquire
Spartanburg County Attorney
P.O. Box 5666
Spartanburg, S.C. 29304

Dear Ms. Claxton,

You seek an opinion as to the impact of Spartanburg County's (the "County") transition from a self-funded insurance plan to the South Carolina Public Employee Benefit Authority's (PEBA) insurance benefits program on the insurance benefits currently afforded part-time magistrates. By way of background, you state:

[The County] is transitioning all employee benefits from the County's current self-funded insurance plan for employee benefits to the PEBA benefits program. The transition will be completed effective January 1, 2014. At that time, the County's benefits plans and programs will cease.

To participate in the PEBA benefits program, a County employee must work at least 30 hours a week in a position classified by the County as permanent and full-time. Several part-time magistrates who currently have benefits coverage through the County's self-funded insurance plan will lose that coverage because those part-time magistrates do not meet the PEBA benefits program eligibility requirement of working at least 30 hours per week.¹ When the County transitions to the PEBA benefits program, no County employees working less than 30 hours a week will be eligible for or will be offered PEBA benefits.

With the above in mind, you specifically ask the following questions:

- (1) Does § 22-8-40(H) permit the County to discontinue insurance benefits for part-time magistrates so long as the County is continuing to treat the part-time magistrates the same as other part-time County employees of similar position and salary?

¹ Here, you note: "The PEBA state benefit program does provide the county with a one-time option to elect to define 'full-time' to mean working at least 20 hours per week. Even if this option was elected by the county, which it was not, such election would not permit coverage of all part-time magistrates since several of the part-time magistrates work only 18 hours per week."

- (2) What impact, if any, does ... § 22-1-10-(A) have on the County's ability to make a change pursuant to § 22-8-40(H) so long as the effect of that change is to continue to treat the part-time magistrates the same as other part-time County employees with similar positions and salaries?
- (3) As of January 1, 2014, the County's insurance benefit plans and programs will cease to exist. If § 22-1-10(A) restricts the County's ability to change insurance benefits for the part-time magistrates, could the County pay the part-time magistrates an amount equal to the insurance premium that the County will be paying for its covered fulltime employees under the PEBA benefits program to enable the part-time magistrates to secure benefits on their own?
- (4) If the answer to Question Three is No, does § 22-1-10(A) obligate the County to secure a separate insurance benefits program for part-time magistrates? If so, what is the level of insurance benefits that the County must offer: (a) the current insurance benefits level (which will cease December 31, 2013); or the new insurance benefits level offered by PEBA (the new plan effective January 1, 2014)?

Law/Analysis

The provisions of S.C. Code § 22-8-40 generally concern the compensation of full-time and part-time magistrates. In addition to setting the base salary for magistrates, the provisions of § 22-8-40 also provide, in relevant part:

(H) Magistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary.

....

(J) 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.

(K) No county may pay a magistrate a salary lower than the base salary established for that county by the provisions of subsection (B) of this section.

(L) Nothing in this section may be interpreted as prohibiting 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.

(M) The South Carolina Court Administration shall monitor compliance with this section. Nothing contained in this section may be construed as prohibiting a

county from paying salaries in excess of the minimum salaries provided for in this section.

....

§ 22-8-40 (emphasis added). We note that the above provisions of § 22-8-40 were originally enacted in 1988,² although some minor changes have been made as to the subsections each provision is found under.

Relying on subsection (H) above, we advised in a prior opinion that "if a county chooses to reward with insurance coverage its part-time employees who have similar positions and salaries as the part-time magistrates, § 22-8-40(H) would obligate the county to do the same for the part-time magistrates." Op. S.C. Att'y Gen., 2001 WL 957749 (July 19, 2001). However, nothing in § 22-8-40 specifies whether, when, or how such benefits or other perquisites may be discontinued or even reduced as to magistrates.³

Reductions in a magistrate's "compensation," which we have repeatedly construed as including perquisites such as insurance benefits,⁴ are addressed in other statutory provisions. In 2000, the Legislature added subsection (C) to § 22-2-40.⁵ In addition to setting forth the methods by which "the number, location, and full-time or part-time status of magistrates in the county may be increased or decreased," that subsection includes the following caveat: "*a magistrate's compensation must not be decreased during his term in office.*" § 22-2-40(C) (emphasis added). Thus, the plain language of § 22-2-40(C) evinces a strong intent that a magistrate's compensation not be reduced during his four-year term in office.

Furthermore, § 22-1-10(A), in addition to providing when the four-year terms of office for magistrates in each county commence,⁶ states as follows:

At least ninety days before the date of the commencement of the terms provided in the preceding paragraph and every four years thereafter, each county governing body must inform, in writing, the Senators representing that county of

² See Act No. 678 of 1988.

³ Although subsection (J) prohibits a reduction in a magistrate's "salary" during his or her tenure in office, this provision is not applicable to perquisites such as health insurance benefits. See Op. S.C. Att'y Gen., 1998 WL 115500 (Feb. 9, 1998) ("[T]he term perquisite when used in connection with a public office means some emolument or profit beyond the salary payable to him. Fringe benefits, such as the payment of group medical and hospital plans ... may not constitute 'salary' in the strictest sense of the word, but they are compensation.").

⁴ See Ops. S.C. Att'y Gen., 2001 WL 1397514 n.1 (Oct. 18, 2001) ("Compensation includes perquisites, such as insurance benefits"); 1995 WL 805827 (Oct. 16, 1995) (noting judicial decisions have broadly construed "compensation" to include fringe benefits such as health insurance).

⁵ See Act No. 226 of 2000.

⁶ § 22-1-10(A) provides that the terms of office for magistrates in Spartanburg County commence on May 1, 1991; thus, we presume that the terms of office for the magistrates currently serving in Spartanburg County commenced on May 1, 2011 and will expire on April 30, 2015.

the number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned. If the county governing body fails to inform, in writing, the Senators representing that county of the information as required in this section, then the compensation, hours, and location of the full-time and part-time magistrate positions available in the county remain as designated for the previous four years.

Each magistrate's number of work hours, compensation, and work location must remain the same throughout the term of office, except for a change (1) specifically allowed by statute or (2) authorized by the county governing body at least four years after the magistrate's most recent appointment and after a material change in conditions has occurred which warrants the change. Nothing provided in this section prohibits the raising of compensation or hours and compensation during a term of office. No magistrate may be paid for work not performed except for bona fide illness or as otherwise provided by law.

....

§ 22-1-10(A) (Supp. 2011) (emphasis added). The above language of § 22-1-10(A) was added in 1991.⁷

In construing the above language of § 22-1-10(A), we noted in a 1995 opinion as follow:

The plain language of [§ 22-1-10(A)], fourth paragraph, evidences a strong intent that a magistrate's compensation is to remain the same throughout the magistrate's term of office. The window of opportunity to change a magistrate's number of work hours, work location, and compensation is extremely limited, as are the reasons for which such may be changed.... If there is deemed to be any conflict between §22-1-10 and Chapter 8 of Title 22, I am of the opinion that any doubt would be resolved by following [§ 22-1-10(A)], which statute reflects the most recent legislative expression as to compensation of magistrates.

Op. S.C. Atty Gen., 1995 WL 805827 (Oct. 16, 1995). Based on the above, we concluded that the county in question "would continue to pay the compensation which it has been paying to the magistrate in question during his present term of office which would include salary and whatever benefits comprise the compensation package ordinarily paid to the magistrate." Id. We also noted that even if the materiality requirement of § 22-1-10(A) had been met, we did not believe a reduction in the magistrate's compensation was permitted under the circumstances because at least four years had not passed since his most recent appointment. Id. at n.1.

The conclusions of the above 1995 opinion apply equally to the present situation. Both § 22-1-10(A) and § 22-2-40(C) indicate the County's part-time magistrates should continue receiving the same levels of compensation, including insurance benefits, they have been provided during their current terms

⁷ See Act No. 136 of 1991.

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of office until the expiration of such terms on April 30, 2015. The limited exception of § 22-1-10(A) does not permit the County to discontinue or reduce the level of compensation currently provided to part-time magistrates on January 1, 2014 even if the materiality requirement is met because at least four years will not have passed since their most recent appointment.

With that being said, we are aware of no law, statutory or otherwise, which prohibits the County from ceasing to provide such insurance benefits to its part-time magistrates once their current terms of office have expired if, pursuant to § 22-8-40(H), County employees of similar position and salary no longer receive such benefits. To accomplish this, the County's governing body should follow the procedures set forth in § 22-1-10(A) for notifying the Senators representing the County of changes in compensation for each magistrate at least ninety days before the terms of office commence on May 1, 2015.

Conclusion

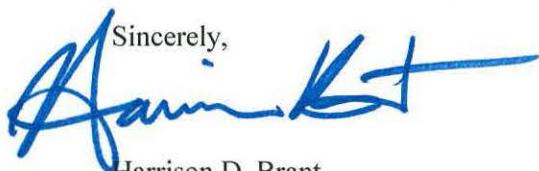
It is the opinion of this Office that State law most likely prohibits a county from discontinuing or reducing the level of insurance benefits provided a part-time magistrate during the unexpired portion of his or her term of office. While we have construed § 22-8-40(H) as obligating a county to provide part-time magistrates with the same insurance coverage provided county employees of similar position and salary, nothing in § 22-8-40 specifies whether, when, or how such benefits or other perquisites may be discontinued or even reduced as to magistrates. However, the plain language of both § 22-1-10(A) and § 22-2-40(C) evince a strong legislative intent that a magistrate's "compensation," which we have repeatedly construed to include perquisites such as insurance benefits, may not be decreased during his or her four-year term in office. Thus, the appropriate question when addressing the legality of changes made to a magistrate's insurance coverage during his or her term of office is not whether the magistrate is continuing to receive the same benefits as county employees of similar position and salary for purposes of § 22-8-40(H), but whether the magistrate's compensation has been improperly reduced as a result. To avoid any potential violation of § 22-1-10(A) or § 22-2-40(C), we would advise the County to continue providing its part-time magistrates with at least the same level of benefits they are currently receiving until their terms of office expire on April 30, 2015. With that being said, we believe the County may cease providing such insurance benefits to its part-time magistrates when their new terms of office commence on May 1, 2015 if the County's governing body complies with the procedural requirements of § 22-1-10(A) and if County employees of similar position and salary no longer receive such benefits for purposes of § 22-8-40(H).

For several reasons, we must respectfully decline to provide any further advice as to how the statutory provisions referenced herein concerning the compensation of magistrates should be complied with under the circumstances presented. First, any determination as to whether a magistrate's compensation has been or will be improperly reduced during his or her term of office as a result of insurance policy changes made by the County is a factual question beyond the scope of an opinion of this Office. Furthermore, the compensation of magistrates beyond the base salaries imposed by statute is, to a certain extent, left to the discretion of a county's governing body subject to certain other statutory restrictions as well as oversight by Court Administration. See § 22-8-40(M) ("Court Administration shall monitor compliance with this section"). Thus, the County's governing body is in the best position to determine how to go about maintaining the part-time magistrates' current levels of compensation until their terms of office expire in light of the County's decision to switch its insurance provider. We will not attempt to micromanage the County's affairs and must ultimately defer to the County Council's discretion

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as to how to achieve such a result. Any magistrate who believes he or she has been aggrieved by the County's action with regards to such insurance benefits may petition the County Council for redress and, if necessary, appeal the Council's determination. § 22-8-50.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General