

The State of South Carolina



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Opinion 108854
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August 26, 1988

Peter D. Hyman, Esquire
Florence County Attorney
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Dear Mr. Hyman:

In a letter to this Office you questioned who controls the number of magistrates and their location in each county. As you pointed out in your letter, pursuant to Article V, Section 26 of the State Constitution "(t)he Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law...."

Pursuant to Section 22-2-40 of the Code,

(t)he General Assembly shall provide for the number and location of magistrates in each county. The provisions of this chapter shall not be construed to prevent more than one magistrate from being assigned to the same jury area.

The authority of the General Assembly to establish the number of magistrates in each county has been recognized by this Office in several previous opinions. See Opinions dated May 7, 1981, April 14, 1980, December 16, 1977. Also, the South Carolina Supreme Court in its decisions in Young v. Sapp, 167 S.C. 364, 166 S.E.2d 354 (1932) and Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1937) recognized the authority of the General Assembly to create or abolish specific magisterial districts in each county. Also, in the legislation, S.1, enacted this year the General Assembly established a ratio of magistrates based on population. See: Section 28-8-40(B) of the Code.

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You also indicated that recent legislation provides for cost of living increases in the salaries of magistrates on an annual basis. You questioned whether such provision is constitutional. In Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981), the State Supreme Court dealt with the question of the constitutionality of Section 22-2-180 of the Code which states in part:

(t)he magistrates of the several counties shall receive such compensation for performance of their duties as may be fixed by the governing body of the county....

In its decision, the Court concluded that such provision was in violation of Article V, Section 1 and Article VIII, Section 14 (4 and 6) of the South Carolina Constitution insofar as such statute provided that the compensation of magistrates could be determined by the county governing bodies. In determining that the provision was unconstitutional, the Court left the matter of magisterial compensation to the General Assembly which was given the duty of developing a schedule of salaries for magistrates. The Court stated that "(w)hile compensation may be provided by the several counties, such must be in keeping with classifications established by the General Assembly." 282 S.E.2d at 606. However, while the Court determined that Section 22-2-180, supra, violated certain State constitutional provisions, counties were not enjoined from complying with its provisions until the General Assembly repealed such provision and adopted a uniform statewide magisterial salary schedule. Such was done with the passage of S.1 which also repealed Section 22-2-180.

In Kramer v. County Council for Dorchester County, 277 S.C. 84, 282 S.E.2d 850 (1981), the State Supreme Court similarly recognized that:

"(i)t is certainly competent for the General Assembly to mandate county funding of county agencies, ... Likewise the General Assembly has the authority to direct counties to support with county funds the courts of the unified system ...(citing State ex rel. McLeod v. Rhodes, Order filed May 6, 1980).

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Consistent with such, in a previous opinion of this Office, Opinion No. 80-85 dated August 5, 1980, it was concluded that:

"a county cannot arbitrarily fail to fund the office of Master-in-equity for that county...."

Referencing such, it appears that the recent legislation providing for cost of living raises of a magistrates would probably be upheld as constitutional.

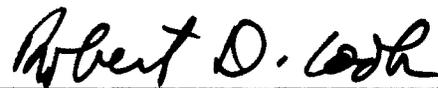
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:



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