

The State of South Carolina



Office of the Attorney General

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December 22, 1988

The Honorable Joe Wilson
Senator, District No. 23
P. O. Box 5709
West Columbia, South Carolina 29171

Dear Senator Wilson:

In a letter to this Office you referenced that Act No. 572 of 1960 provides for four year terms of office for Lexington County magistrates which expire on December 31, 1988. Act No. 678 of 1988 provides for four year terms for magistrates in Lexington County which are to commence on May 1, 1991. You questioned the procedure to be followed in the interim period between January 1, 1989 and April 30, 1991. You specifically questioned for what term of office should magistrates be appointed until 1991 and pursuant to what legislation. You also questioned whether there will be a vacancy December 31, 1988 or will the current term be extended by the 1988 legislation.

Enclosed please find a copy of an opinion of this Office to the State Court Administration Office which is responsive to questions regarding Act No. 678. Consistent with our response in that opinion, typically magistrates would continue to holdover in office after the expiration of their terms until their successors are appointed and qualify.

As referenced in the enclosed opinion, Act No. 678 becomes effective January 1, 1989. However, it is the opinion of this Office that the four year terms for magistrates provided by such legislation are prospective and do not begin until the dates specified which for Lexington County magistrates is May 1, 1991. The opinion also indicates that the General Assembly probably did not intend to increase the terms of incumbent magistrates so as to coincide with the commencement of the four year terms specified. Instead this Office concluded that the better reading of Act No. 678 supports the conclusion that the Governor, upon the expiration of the term of

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office of an incumbent magistrate, may make appointments to such positions which would be forwarded to the Senate for its consideration. In making such appointments, the Governor could note the dates of the commencement of the referenced four year terms.

As stated in the opinion, because of the ambiguities of Act No. 678, consideration may be given to enacting legislation clarifying its provisions. This would resolve any doubts as to the proper manner of filling magisterial positions prior to the commencement of the terms specified by such legislation.

If there is anything further, please advise. With best wishes,
I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions