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December 22, 1988

George A. Markert, Assistant Director
South Carolina Court Administration
Post Office Box 50447
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Dear Mr. Markert:

As you are aware, Assistant Attorney General Charles Richardson and I have been assigned to research and respond to the various questions which your agency has raised concerning the provisions of Act No. 678 of 1988. Following are responses to your questions numbered 7, 9, and 14 as outlined in your letter of December 6, 1988. As noted in Mr. Richardson's opinion, these questions are for the most part novel and of first impression; legislative clarification may well be in order.

Question 7

> Section 125.12 of the annual appropriations act provides a state supplement to the salaries of probate judges, "in addition to any amounts presently provided by the county for these positions." Should this state supplement be considered a part of the base salary counties are required to pay pursuant to Section 8-21-765 of Act 678?

Section 8-21-765 of the Code of Laws of South Carolina, as added by Act No. 678 of 1988, establishes the basic salary schedule for the office of probate judge in the various counties. Subsection (A) begins:

> The salary of the office of probate judge is based on a salary schedule which uses base salaries determined by population categories according to the latest official United States

> Decennial Census. The governing body of each county shall pay the probate judge of the county a base salary as follows:

Then follows a schedule of salaries based upon the population of the county. In subsection (B), it is stated that "[a] probate judge is entitled to the same perquisites as those employees of the county of similar position and salary." From the respective counties, probate judges thus receive a base salary and whatever perquisites are appropriate. 1/

Section 125.12 of Act No. 658 of 1988, the 1988-89 annual appropriations act, provides a $1,575 salary supplement to be paid to, inter alia, probate judges. As noted in your question, this proviso provides: "It is the intent of the General Assembly that the amount appropriated for such salary supplements shall include both salary and related employer contributions and such amounts shall be in addition to any amounts presently being provided by the county for these positions." (Emphasis added.) This Office has taken the position on several occasions that this salary supplement not be used to determine the amount the county would pay as the salary of the probate judge or other officials who receive a similar salary supplement. See Ops. Atty. Gen. dated June 15, 1987; July 24, 1980; September 5, 1979; and others. The proviso also states: "Any reduction by any county in the salary of the ... Probate Judges ... or any other reduction of expenditures in the office of the ... Probate Judges ... shall result in a corresponding decrease of funds provided to that county by the State." As stated in the opinion dated July 24, 1980, "The legislative intent declared ... is unequivocal that the ... supplement ... is to be above and beyond the compensation they would otherwise receive."

The clear, unequivocal language of Section 125.12 of Act No. 658 of 1988 requires that the salary supplement to probate judges be in addition to whatever compensation may be paid by the county. Thus, it is our opinion that the salary supplement would be in addition to, and not a part of, the base salary of probate judges.

1/ A perquisite would be some benefit, in addition to base salary, incidental to one's position or employment. City of Kettering v. Berger, 4 Ohio App.3d 254, 448 N.E.2d 458 (1982). See also 32 Words and Phrases, "Perquisite" and Op. Atty. Gen. dated August 5, 1988.

Question 9

> Magistrates and Probate Judges "are entitled to the same perquisites as those employees of the county of similar position and salary." If the county provides cost of living supplements to other employees, are judges entitled to the same benefits?

As noted in footnote 1, a perquisite is some benefit which is paid to an individual in addition to his wages or salary. An example of a perquisite is the payment of group medical and hospitalization premiums. 63A Am.Jur.2d Public Officers and Employees § 450. Such adjustments may not be in the form of salary but are included as a part of the compensation package. Id.; Op. Atty. Gen. dated August 5, 1988. Exactly how a cost of living supplement or adjustment should be treated is unclear at best; it could easily be argued that such is not a perquisite but instead becomes a part of the employee's salary base, rather than being an amount paid in addition to the salary. Conceivably, such a cost of living adjustment could be paid in one manner in some counties (as a perquisite) and in another manner in others (adding a cost of living adjustment which then becomes a part of the individual's salary).

Thus, the answer to your question must necessarily depend on how a cost of living adjustment is characterized by a particular county. If all employees' salaries are adjusted by, for example, four percent, so that future adjustments to salary are then calculated on the basis of the newly-adjusted salary, then such may not be a perquisite but an adjustment in salary.

On the other hand, if the county considers a cost of living adjustment or supplement to be a perquisite, it would be appropriate for the county to provide this perquisite to magistrates and probate judges.

You raised a hypothetical question concerning magistrates and probate judges involving the state cost of living supplement of four percent, the chief magistrate's supplement where applicable, and a county cost of living supplement of four percent. As noted above, whether these judges would be entitled to the county adjustment or supplement depends upon the characterization of such adjustments or supplements. Thus, without more input from a particular county, it

would be difficult to determine how to treat the county's adjustment or supplement.

Legislative clarification about this question may be advisable, as well, because no intent may be found within Act No. 678 as to how cost of living adjustments made one year are to be treated in subsequent years, or how cost of living adjustments are to be handled generally: for example, a county may delay implementation of such an adjustment whereas, as noted in Mr. Richardson's opinion, an adjustment based on the cost of living adjustment paid to state employees may take effect on July 1 of a particular year.

Question 14

> Salaries of masters-in-equity are tied to salaries of circuit judges (see Section 14-11-30). The fiscal years of some counties do not necessarily coincide with the state fiscal year. For those counties, when should salary increases to master-in-equity salaries made necessarily by increases in circuit judges salaries become effective? At the commencement of the county fiscal year? If so, should the county be made responsible for any increases incurred in the previous fiscal year?

Section 11-9-80 of the Code provides that the fiscal year observed by the State of South Carolina is to begin on July 1 of a given year and end on June 30 of the next succeeding year. Likewise, Section 4-9-140 of the Code provides that the fiscal year to be observed by counties will begin on July first of each year and end on June 30 of the year next following. We are advised by personnel in the Local Government Division of the Comptroller General's Office that all counties do indeed observe the same fiscal year as that observed by the State of South Carolina. Thus, there should be no difficulty in implementing salary increases of masters-in-equity which increases are tied to salaries of circuit judges and thus are increased by the General Assembly. (See Op. Atty. Gen. dated July 25, 1984, to Steve K. Good, concerning implementation of circuit judges' salaries.)

I trust that the foregoing has satisfactorily responded to your remaining three questions. If I may assist you further, please advise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook

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