

The State of South Carolina



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December 9, 1988

The Honorable Robert B. Brown
Member, House of Representatives
Drawer 660
Marion, South Carolina 29571

Dear Representative Brown:

In a telephone conversation you raised questions concerning a magisterial vacancy in Marion County which was caused by the death of Mr. H. E. Turbeville who served as a full-time magistrate in that County. I understand that prior to the death of Judge Turbeville, Marion County had two (2) full-time magistrates and three (3) part-time magistrates. You have questioned the impact of Act No. 678 of 1988 which provides several changes to the magisterial court system on filling the vacancy caused by Mr. Turbeville's death.

Pursuant to Section 4 of Act No. 678, new magisterial terms are established. Section 22-1-10 of the Code has been amended to provide that magistrates in Marion County will serve terms of four years beginning May 1, 1990. Also, pursuant to provisions to be codified as Section 22-8-40, a magisterial pay plan and procedure for determining the number of magistrates in each county is established. According to information supplied by the State Court Administration Office which is given the responsibility of monitoring compliance with such provision, the formula provided in Section 22-8-40 establishes 2.5 magisterial positions for Marion County with a salary base of seventeen thousand (\$17,000.00) dollars. Pursuant to subsection (C) of such provision, part-time magistrates are to be computed at a ratio of four part-time magistrates equals one full-time magistrate. Section 22-8-40(A) states that it is the responsibility of the county governing body to designate magistrates as either full time or part time. Section 22-1-10 and 22-8-40 are effective January 1, 1989.

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Based upon my conversations with individuals familiar with the history of Act No. 678, while a maximum number of magistrates for each county was established by the legislation, it was the legislative intent that no magistrates currently serving on the effective date of Act No. 678 would lose their positions. Instead, the mechanism for reaching the designated number in counties where the number of magistrates presently exceeds the maximum number would be by factors such as death or resignation. Also, presumably, such maximum number would be considered in making appointments to new terms. I would note that Section 22-8-40(B)(3) states "(n)o additional magistrates may be added until a county has less than the ratio." Also, while the above explanation is my understanding of the intent of the General Assembly, my review of the legislation does not reveal where such intent is clearly explained. This may be a matter that could be clarified by further legislation.

As to your specific question concerning filling the magisterial vacancy in your county, as stated, Act No. 678 becomes effective January 1, 1989. If any steps were taken to fill the vacancy prior to such date, such should be in accord with Section 1-3-210 of the Code. Such provision states in part:

(a)ny vacancies which may happen in any of the following offices during the recess of the Senate may be filled by the Governor, who shall report the appointment to the Senate at its next session: ... (3) magistrates ... If the Senate does not advise and consent thereto at such next session, the office shall be vacant.

I am enclosing copies of two prior opinions of this Office dated October 13, 1977 and May 12, 1987 which detail the procedure for approval by the Senate of an interim appointment.

The opinions state that following an interim appointment, the Governor must submit the name of an appointee to the Senate at its next session. While typically the selection of the individual to fill a magisterial office is within the discretion of the Governor, I assume that the Governor would submit the name of same individual he named as interim magistrate to the Senate for its approval. This would avoid questions relating to the appointment of an individual after the effective date of Act No. 678, which again is January 1, 1989. If the same individual's name is sent to the Senate, and the Senate consents, the individual named would presumably complete Judge Turbeville's term. My research has not revealed any cases commenting on a situation similar to this but the conclusion stated above appears to be the better reading of the applicable statutes. Of course, any decision as to whether to proceed to fill the vacancy on an interim basis is a matter within the discretion of local authorities.

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If there are any questions, please advise.

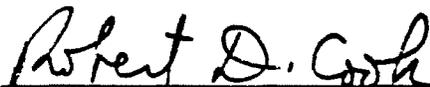
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:ss
Enclosures

REVIEWED AND APPROVED BY:



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