

The State of South Carolina



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The Honorable Joyce C. Hearn
Member, House of Representatives
1300 Berkeley Road
Columbia, South Carolina 29205

Dear Representative Hearn:

In a letter to this Office you raised a question regarding the procedure for setting magistrates' salaries in this State. You stated that it was your understanding that such salaries are set by the State with no input from local county councils. You specifically questioned whether a county council is authorized to raise or change salaries of magistrates. You also questioned whether the recent action by the Richland County Council to increase the salary of Richland County Magistrate Hill was proper.

Please be advised that instead of being set by the State, magistrates' salaries are set by the various county governing bodies. Section 22-2-180 of the Code specifically states:

"(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, which shall not be diminished during their terms of office, and such compensation shall not be measured or affected by the fees and costs received and recovered by such officers...." See also: Section 8-21-1000, Code of laws of South Carolina, 1976, as amended ("all magistrates shall receive salaries in lieu of all fees and costs in

The Honorable Joyce C. Hearn
Page 2
December 2, 1986

civil or criminal actions or proceedings...."); Section 4-1-130, Code of Laws of South Carolina, 1976 ("each county shall pay ... (6) Fees or salaries of magistrates and constables....")

The South Carolina Supreme Court in Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981) was faced with the question of the constitutionality of Section 22-2-180, supra. 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. Inasmuch as the General Assembly has not yet enacted such a schedule, Section 22-2-180, supra, is still effective. Therefore, the authority to fix magisterial compensation remains with a county pending action by the General Assembly. Implicitly, such authority would include the authority to grant raises to magistrates. Of course, any decision as to raises remains within the discretion of the county.

The General Assembly has considered legislation, specifically House Bill 2405, that would provide a uniform compensation plan for magistrates. Such legislation passed the House but died in the Senate during this past legislative session. I am informed that a new Senate bill providing for magisterial pay has been drafted for consideration in the upcoming legislative session. However, as stated, until the General Assembly enacts any such legislation, Section 22-1-180 remains effective.

As to your question regarding Magistrate Hill, I am informed that pursuant to an Order dated November 18, 1986, Special Circuit Judge Bruce Littlejohn ruled that Richland County was required to pay Magistrate Hill the required compensation for Chief Magistrate in Richland County pursuant to the

The Honorable Joyce C. Hearn
Page 3
December 2, 1986

County's Pay and Classification Plan as set forth in Section 7-12 of the Richland County Code of Ordinances, effective as of the date of his appointment in January of 1986. I further understand that such Order is being appealed to the State Supreme Court by Richland County. Consistent with the policy of this Office, we are unable to comment in an opinion on a question in litigation or on appeal. Therefore, we cannot respond specifically to your question regarding Magistrate Hill.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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