

1977 S.C. Op. Atty. Gen. 302 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-376, 1977 WL 24713

Office of the Attorney General

State of South Carolina

Opinion No. 77-376

November 30, 1977

*1 TO: William M. Catoe, Jr., Esquire
Attorney for Lancaster County

QUESTIONS PRESENTED:

1. As to the appointment of an individual now serving as a magistrate in Kershaw County to be a magistrate for that area to be annexed to Lancaster County from Kershaw County,
 - a. is it necessary that he be appointed to serve as a Lancaster County magistrate even though he is rightfully serving presently as a Kershaw County magistrate?
 - b. will he receive the same compensation as all other Lancaster County magistrates?
 - c. what shall he do with all cases pending before him as a Kershaw County magistrate at the time he is no longer able to serve as a Kershaw County magistrate due to the annexation?
 - d. as a Lancaster County magistrate, will he have county-wide jurisdiction?
2. Are municipalities in Lancaster County to be reimbursed any funds originating from fines resulting from arrests made by municipal police officers when such arrests lead to cases being brought before the Lancaster County Court of General Sessions?

AUTHORITIES CITED:

Act No. 192, 60 Acts and Joint Resolutions 505 (1977);

Section 22-1-10, Code of Laws of South Carolina, 1976;

Article V, Section 23, South Carolina Constitution;

Act No. 881, 50 Acts and Joint Resolutions 1876 (1958);

Section 22-1-80, Code of Laws of South Carolina, 1976;

Act No. 873, 54 Acts and Joint Resolutions 2201 (1966);

Act No. 101, 52 Acts and Joint Resolutions 103 (1961);

[Dill v. Durham, 56 S.C. 423, 35 S.E. 3 \(1900\).](#)

DISCUSSION:

As to the questions regarding the status and responsibilities of the magistrate who is to serve that area to be annexed to Lancaster County, please be advised that Act No. 192, 60 Acts and Joint Resolutions 505 (1977), states as follows:

'Lancaster County magistrates—SECTION 1. Section 43–851 of the 1962 Code is amended to read:

'Section 43–851. There shall be appointed for Lancaster County ten magistrates, one for each township in the county as follows: Gill Creek, Cane Creek, Cedar Creek, Flat Creek, Buford, Pleasant Hill, Waxhaw and Indian Land, and one magistrate for the townships of Pleasant Hill and Flat Creek, who shall reside and keep his office in the town of Kershaw in the County, and one for the area annexed to the county from Kershaw County in 1977 who shall reside in that area. The magistrate for Gills Creek township shall reside at and keep his office at Lancaster courthouse and the magistrate for Cane Creek township shall keep his office at the Lancaster cotton mills. Each of the magistrates appointed under the provisions hereof shall be a resident of the judicial district for which he is appointed and shall reside therein during his term of office.'

Further—SECTION 2. Notwithstanding any other provisions of law, the magistrate serving Flat Rock Township in Kershaw County on December 31, 1977, shall continue to serve that portion of such township lying in Kershaw County for the remainder of the term for which he was appointed.

***2 Time effective—SECTION 3.** This act shall take effect December 31, 1977.' (Emphasis Added)

Therefore, it is provided that there shall be appointed for Lancaster County a magistrate for the area annexed to the county from Kershaw County in 1977 who shall reside in the annexed area. You have indicated that Mr. T. J. Gardner, who is presently a Kershaw County magistrate for the Buffalo District, and is living in the area to be annexed, is the individual who is to become the magistrate for this annexed area. Even though Mr. Gardner has been appointed to serve as a magistrate in Kershaw County and is now serving as such, it will be necessary that he be appointed to be a Lancaster County magistrate within the provisions of Section 22–1–10, Code of Laws of South Carolina, 1976, and Article V, Section 23 of the South Carolina Constitution. Under the Constitution, a magistrate's jurisdiction is confined to the county for which he is appointed. [Dill v. Durham, 56 S.C. 423, 35 S.E. 3 \(1900\)](#). (Question 1a). By virtue of living in the area annexed to Lancaster County, Mr. Gardner would be unable to continue to serve as a Kershaw County magistrate and thus have any jurisdiction over cases brought in Kershaw County inasmuch as Act No. 881, 50 Acts and Joint Resolutions 1876 (1958), provides that as to Kershaw County magistrates, 'each magistrate shall reside in the district or township which he serves.'

As a Lancaster County magistrate, Mr. Gardner would receive that compensation provided all other Lancaster County magistrates. (Question 1b). As to the cases he would have pending in Kershaw County, at the time the annexation goes into effect, he would, as earlier indicated, no longer be able to serve as a magistrate in Kershaw County and therefore could not have any jurisdiction in that county. He would be in a situation tantamount to that as outlined in Section 22–1–80, Code of Laws of South Carolina, 1976, which states in part that:

'Each magistrate shall keep two books, one for civil and the other for criminal cases, wherein he shall insert all his proceedings in each case by its title . . . Whenever any magistrate shall die, resign, be removed or go out of office his books of office, with all records relating thereto in civil cases which have not been settled, shall be turned over to his successors or to some magistrate in the same county, who shall proceed thereon the same as if he had tried such cases and issued the papers thereon himself.' (Question 1c).

As to his jurisdiction, Act No. 893, 54 Acts and Joint Resolutions 2201 (1966), provides in part that for Lancaster County magistrates,

'In all criminal actions triable by them such magistrates, with the exception of the magistrate for Gills Creek township, shall have jurisdiction only within the limits of their respective districts . . . In prosecutions cognizable by the courts of general sessions and in all civil matters the magistrates shall each have jurisdiction throughout the limits of the county. But prosecutions

and civil actions may be removed from one magistrate to another for the same cause and in the same manner as is provided by general law and the courts of common pleas shall have concurrent jurisdiction in all civil actions triable by magistrates’

*3 Thus Mr. Gardner as a Lancaster County magistrate would have magisterial criminal jurisdiction only within his particular district (the area annexed) but as to his civil jurisdiction and jurisdiction over matters cognizable by the courts of general sessions, he would have county-wide jurisdiction. (Question 1d).

As to the question concerning whether municipalities are to be reimbursed any part of fines which result from cases made in General Sessions Court by officers of municipalities, please be informed that Act No. 101, 52 Acts and Joint Resolutions 103 (1961), provides for such division. The Act states:

‘After the effective date of this act the fine of any person whose offense was committed within the corporate limits of any municipality in Lancaster County and is tried and convicted in the circuit court of the county, such fine as may be collected shall be divided equally between the municipality concerned and the county. However, and jail costs incurred by the prisoner while in confinement shall be deducted from the fine collected before it is divided between the county and the municipality.’

The Act was approved March 16, 1961.

CONCLUSION:

Concerning the appointment of an individual now serving as a Kershaw County magistrate to be a magistrate for that area to be annexed to Lancaster County from Kershaw County, it will be necessary that he be appointed as a Lancaster County magistrate even though he was lawfully appointed a Kershaw County magistrate. As a Lancaster County magistrate he would receive that compensation provided other Lancaster County magistrates. As to the cases pending before him as a Kershaw County magistrate at the time he is no longer able to serve as such due to the annexation, these matters should be turned over to his successor or to some other Kershaw County magistrate for handling. As a Lancaster County magistrate, he would have magisterial criminal jurisdiction only within the district for which he is appointed. However, as to matters within the jurisdiction of the court of general sessions and in all civil matters, he would have county-wide jurisdiction.

As to whether Lancaster County municipalities are to be reimbursed any part of fines which result from cases made in General Sessions Court by municipal officers, such fines may be collected and divided equally between the municipality concerned and Lancaster County. However any such costs incurred by the prisoner while confined shall be deducted before the division.

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